

Table of Contents

Agenda	3
Refinancing of Old Town Marriott Courtyard Hotel. (District VI)	
Agenda Report No. IV-1.	9
Amended and Restated Leases.	11
Amended and Restated Mortgage	25
Ordinance No. 49-106.	65
Bond Origination Fee Agreement.	68
2011 Solid Waste Plan.	
Agenda Report No. IV-2.	71
Ordinance No. 49-107.	73
Delinated Ordinance	85
Solid Waste and Recycling Proposal	97
Preliminary Estimates. (See Attached)	
Agenda Report No. II-4a	98
Partial Acquisition at 5159 North Wichita for the Wichita-Valley Center Flood Control Levee Certification and Rehabilitation Project. (County)	
Agenda No. II-5a	99
Supporting Documents	100
Partial Acquisition at 3821 North Arkansas for the Wichita-Valley Center Flood Control Levee Certification and Rehabilitation Project. (District VI)	
Agenda No. II-5b	105
Real Estate Agreements and Maps.	106
Partial Acquisition at 5116 North Valentine for the Wichita-Valley Center Flood Control Levee Certification and Rehabilitation Project. (County)	
Agenda Report No. II-5c	112
Supporting Documents	113
Partial Acquisition at 5128 North Valentine for the Wichita-Valley Center Flood Control Levee Certification and Rehabilitation Project. (County)	
Agenda No. II-5d	118
Real Estate Agreement and Maps	119
Partial Acquisition at 5104 North Valentine for the Wichita-Valley Center Flood Control Levee Certification and Rehabilitation Project. (County)	
Agenda No. II-5e	125
Real Estate Agreements and Maps.	126
Partial Acquisition of Land in the 14800 Block of West Kellogg for the West Kellogg Freeway Project. (Districts IV and V)	
Agenda Report No. II-5f.	132
14800 Blk W Kellogg	133
Report on Claims for August, 2011.	
Agenda Report No. II-7	140

Fire Department grant application to Assistance to Firefighters Grant (AFG) Program – Fire Prevention and Safety Grant 2010.	
Agenda Report No. II-8	141
Grant Award Package.	142
Approval of an Encroachment Agreement across the Drainage Dedication near George Washington Boulevard and Oliver. (District III)	
Agenda Report No. II-9	148
Encroachment Agreement and Aerial Map	149
List of Second Reading Ordinances. (See Attached)	
Second Reading Ordinances	154

FINAL
CITY COUNCIL
CITY OF WICHITA
KANSAS

City Council Meeting
09:00 a.m. October 11, 2011

City Council Chambers
455 North Main

OPENING OF REGULAR MEETING

- Call to Order
- Invocation
- Pledge of Allegiance
- Approve the minutes of the regular meeting on October 4, 2011

AWARDS AND PROCLAMATIONS

None

I. PUBLIC AGENDA

NOTICE: No action will be taken relative to items on this agenda other than referral for information. Requests to appear will be placed on a “first-come, first-served” basis. This portion of the meeting is limited to thirty minutes and shall be subject to a limitation of five minutes for each presentation with no extension of time permitted. No speaker shall be allowed to appear more frequently than once every fourth meeting. Members of the public desiring to present matters to the Council on the public agenda must submit a request in writing to the office of the city manager prior to twelve noon on the Tuesday preceding the council meeting. Matter pertaining to personnel, litigation and violations of laws and ordinances are excluded from the agenda. Rules of decorum as provided in this code will be observed.

1. Susan Oliver Estes - Response to Ken Mar discussion.

II. CONSENT AGENDAS (ITEMS 1 THROUGH 10)

NOTICE: Items listed under the “Consent Agendas” will be enacted by one motion with no separate discussion. If discussion on an item is desired, the item will be removed from the “Consent Agendas” and considered separately

*(The Council will be considering the City Council Consent Agenda as well as the Planning, Housing, and Airport Consent Agendas. Please see “**ATTACHMENT 1 – CONSENT AGENDA ITEMS**” for a listing of all Consent Agenda Items.)*

COUNCIL BUSINESS

III. UNFINISHED COUNCIL BUSINESS

None

IV. NEW COUNCIL BUSINESS

1. Refinancing of Old Town Marriott Courtyard Hotel. (District VI)

RECOMMENDED ACTION: Place on first reading the Ordinance approving the First Amendment to the Industrial Revenue Bond Lease Agreement, the Bond Origination Fee Agreement, and the City's acknowledgement and consent to the restated mortgage and restated and amended assignment of leases and rents, and authorize necessary signatures.

2. 2011 Solid Waste Plan.

RECOMMENDED ACTION: Approve the 2011 Solid Waste Plan and place the revised City ordinances in Municipal Code Sections 3 and 7 on first reading.

COUNCIL BUSINESS SUBMITTED BY CITY AUTHORITIES

PLANNING AGENDA

NOTICE: Public hearing on planning items is conducted by the MAPC under provisions of State law. Adopted policy is that additional hearing on zoning applications will not be conducted by the City Council unless a statement alleging (1) unfair hearing before the MAPC, or (2) alleging new facts or evidence has been filed with the City Clerk by 5p.m. on the Wednesday preceding this meeting. The Council will determine from the written statement whether to return the matter to the MAPC for rehearing.

V. NON-CONSENT PLANNING AGENDA

None

HOUSING AGENDA

NOTICE: The City Council is meeting as the governing body of the Housing Authority for consideration and action on the items on this Agenda, pursuant to State law, HUD, and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

Fern Griffith, Housing Member is also seated with the City Council.

None

VI. NON-CONSENT HOUSING AGENDA

AIRPORT AGENDA

NOTICE: The City Council is meeting as the governing body of the Airport Authority for consideration and action on items on this Agenda, pursuant to State law and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

VII. NON-CONSENT AIRPORT AGENDA

1. **Supplemental Agreement No. 6 - AECOM Program Management Services - Air Capital Terminal 3 (ACT 3) Program. (PULLED PER CITY MANAGER)**

COUNCIL AGENDA

VIII. COUNCIL MEMBER AGENDA

1. **Approval of travel expenses for Mayor Carl Brewer to attend the National League of Cities Executive Board Meeting in Washington, DC, October 26-28, 2011.**

RECOMMENDED ACTION: Approve the expenditures.

IX. COUNCIL MEMBER APPOINTMENTS

1. **Board Appointments.**

RECOMMENDED ACTION: Approve the Appointments.

Adjournment

(ATTACHMENT 1 – CONSENT AGENDA ITEMS 1 THROUGH 10)

II. CITY COUNCIL CONSENT AGENDA ITEMS

1. Report of Board of Bids and Contracts dated October 10, 2011.

RECOMMENDED ACTION: Receive and file report; approve Contracts;
authorize necessary signatures.

2. Applications for Licenses:

<u>Renewal</u>	<u>2011</u>	<u>Address</u>
Robert Floyd	Rock Road Gift Shop Inc. dba Patricia's	3526 North Rock Road Suite 200

RECOMMENDED ACTION: Approve the licenses.

3. Applications for Licenses to Retail Cereal Malt Beverages:

<u>Renewal</u>	<u>2011</u>	<u>(Consumption on Premises)</u>
Wayne L Smith	Wichita Canteen Company, Inc.**	1845 Fairmount

**Consumption/ General Restaurant 50% or more gross revenue from sale of food.

RECOMMENDED ACTION: Approve licenses subject to Staff review and approval.

4. Preliminary Estimates:

- a. Preliminary Estimates. (See Attached)

RECOMMENDED ACTION: Receive and file.

5. Property Acquisitions:

- Partial Acquisition at 5159 North Wichita for the Wichita-Valley Center Flood Control Levee Certification and Rehabilitation Project. (County)
- Partial Acquisition at 3821 North Arkansas for the Wichita-Valley Center Flood Control Levee Certification and Rehabilitation Project. (District VI)
- Partial Acquisition at 5116 North Valentine for the Wichita-Valley Center Flood Control Levee Certification and Rehabilitation Project. (County)
- Partial Acquisition at 5128 North Valentine for the Wichita-Valley Center Flood Control Levee Certification and Rehabilitation Project. (County)
- Partial Acquisition at 5104 North Valentine for the Wichita-Valley Center Flood Control Levee Certification and Rehabilitation Project. (County)
- Partial Acquisition of Land in the 14800 Block of West Kellogg for the West Kellogg Freeway Project. (Districts IV and V)

RECOMMENDED ACTION: Approve budgets and Contracts; authorize necessary signatures.

6. Minutes of Advisory Boards/Commissions

Board of Appeals of Refrigeration, Air Conditioning, Warm Air and Boiler, June 23, 2011
Board of Appeals of Refrigeration, Air Conditioning, Warm Air and Boiler, August 25, 2011
Board of Appeals of Plumbers and Gas Fitters, August 3, 2011

RECOMMENDED ACTION: Receive and file.

7. Report on Claims for August, 2011.

RECOMMENDED ACTION: Receive and file.

8. Fire Department grant application to Assistance to Firefighters Grant (AFG) Program – Fire Prevention and Safety Grant 2010.

RECOMMENDED ACTION: Approve the grant award and authorize the necessary signatures.

9. Approval of an Encroachment Agreement across the Drainage Dedication near George Washington Boulevard and Oliver. (District III)

RECOMMENDED ACTION: Approve the encroachment agreement and authorize necessary signatures.

10. Second Reading Ordinances: (First Read October 4, 2011)
List of Second Reading Ordinances. (See Attached)

RECOMMENDED ACTION: Adopt the Ordinances.

II. CONSENT PLANNING AGENDA ITEMS

NOTICE: Public hearing on planning items is conducted by the MAPC under provisions of State law. Adopted policy is that additional hearing on zoning applications will not be conducted by the City Council unless a statement alleging (1) unfair hearing before the MAPC, or (2) alleging new facts or evidence has been filed with the City Clerk by 5p.m. on the Wednesday preceding this meeting. The Council will determine from the written statement whether to return the matter to the MAPC for rehearing.

None

II. CONSENT HOUSING AGENDA ITEMS

NOTICE: The City Council is meeting as the governing body of the Housing Authority for consideration and action on the items on this Agenda, pursuant to State law, HUD, and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

Fern Griffith, Housing Member is also seated with the City Council.

None

II. CONSENT AIRPORT AGENDA ITEMS

NOTICE: The City Council is meeting as the governing body of the Airport Authority for consideration and action on items on this Agenda, pursuant to State law and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

None

City of Wichita
City Council Meeting
October 11, 2011

TO: Mayor and City Council

SUBJECT: Refinancing of Old Town Marriott Courtyard Hotel (District VI)

INITIATED BY: Office of Urban Development

AGENDA: New Business

Recommendation: Place on first reading the Ordinance approving the First Amendment to the Industrial Revenue Bond Lease Agreement, the Bond Origination Fee Agreement, and the City's acknowledgement and consent to the restated mortgage and restated and amended assignment of leases and rents, and authorize necessary signatures.

Background: On December 28, 2006, the City of Wichita issued Series VI-A and Series VI-B Industrial Revenue Bonds (IRBs) in the amounts of \$13,250,000 (A) and \$885,000 (B) for the benefit of Old Town Lodging, LLC to finance the conversion of a warehouse in Old Town into a Courtyard by Marriott Hotel. Series A was purchased by Nationwide Life Insurance (Nationwide) as construction financing. Series B was purchased by Old Town Lodging, LLC as project equity. At the time of approval of the issuance of IRBs, the City Council also approved a 100% property tax abatement on all bond-financed property for an initial five-year term, plus a second five years based on Council review and approval, subject to an annual payment-in-lieu-of taxes (PILOT) in the amount of \$45,000 less actual taxes paid. The PILOT amount would make a substantial contribution for its share of the Tax Increment Financing District (TIF) payment.

Old Town Lodging, LLC was formed by local hotel developer Jim Korroch, to develop, own and operate the new Courtyard by Marriott Hotel at 820 E. Second Street. Old Town Lodging renovated the two-story former Printing Inc. warehouse and added three additional stories to create a hotel with 129 guest rooms, a restaurant/coffee shop, meeting rooms, a fitness center and a large atrium area.

Analysis: The Series A IRBs with Nationwide will reach their maturity December 1, 2011. Wells Fargo Bank (Wells Fargo) has agreed to acquire the Series A bonds from Nationwide, extend the maturity date and add an additional \$1,750,000 of debt to Old Town Lodging for a total loan of \$15,000,000 to satisfy all outstanding debt with Nationwide. Wells Fargo is also buying the Series B bonds from Old Town Lodging, LLC.

Rockbridge Capital will acquire 100% ownership of Old Town Lodging, LLC to satisfy an outstanding mezzanine loan. AG Hospitality, a hotel management company owned in part by Jim Korroch, has been managing the hotel since its opening and will continue to manage the hotel.

The PILOT was required by the City Council to make a contribution to the TIF bond payments for the Old Town Cinema Redevelopment TIF District. City staff anticipated that a major portion of the \$45,000 annual PILOT payment would be applied to the TIF District. The Sedgwick County Treasurer has determined that the TIF district is not eligible to receive PILOT payments under state law. The County Treasurer cited KSA 12-1742 which states that, "The county treasurer shall apportion such [PILOT] payment among the taxing subdivisions of this state in the territory in which the facility is located." Supported by an Attorney General's Opinion, the County Treasurer has determined that the TIF District is a taxing "district" and not a taxing "subdivision." Therefore, it is not due any of the revenue from the PILOT.

The same State statute allows for municipalities to charge an “origination fee” that is not considered a PILOT and can be used for economic development purposes. Staff is recommending that the IRB documents be amended to replace the PILOT with a bond origination fee of \$225,000 be applied to the property to be paid in equal annual installments of \$45,000 from 2012 – 2016 to provide for some coverage of the projects’ share of the TIF district costs.

The IRB letter of intent required the project to create 60 jobs at an average salary at, or above, the industry average. The Marriott Courtyard has employed 77 full time equivalents through the first three quarters of this year at an average annual salary of \$20,072 which exceeds the industry average of \$18,658. Therefore staff is recommending extension of the property tax abatement for a second five years, which will be accomplished by approval of the First Amendment to the Industrial Revenue Bond Lease Agreement.

Financial Considerations: There is no financial impact to the City by approving the refinancing. Bondholders have provided consent to the refinance of the project and assignment of the lease. A bond origination fee of \$225,000 will be paid in equal annual installments of \$45,000 from 2012-2016 to be deposited in the Debt Service Fund to assist with the payment of Old Town Cinema Redevelopment District TIF bonds.

Goal Impact: Economic Vitality and Quality of Life. Approving the refinancing of the hotel contributes to the continued development of the downtown area.

Legal Considerations: All documents have been reviewed and approved as to form by the Law Department prior to the refinance.

Recommendation/Actions: It is recommended that the City Council place on first reading the Ordinance approving the First Amendment to the Industrial Revenue Bond Lease Agreement, the Bond Origination Fee Agreement, and the City’s acknowledgement and consent to the restated mortgage and restated and amended assignment of leases and rents, and authorize necessary signatures.

Attachments: Ordinance, Bond Origination Fee Agreement, Restated Mortgage, Restated and Amended Assignment of Leases and Rents

This instrument was prepared by:
Jack C. Marvin
Stinson Morrison Hecker LLP
1625 N. Waterfront Parkway, Suite 300
Wichita, Kansas 67206

After recording return to:
Sherrie Courtney-Sanders
Wells Fargo Bank
2030 Main Street
Suite 500
Irvine, California 92614

ASSIGNMENT OF LEASES AND RENTS

AMENDMENT AND RESTATEMENT

THIS ASSIGNMENT OF LEASES AND RENTS -- AMENDMENT AND RESTATEMENT (this "Assignment") is made as of October ____, 2011, by **OLD TOWN LODGING, LLC**, a Kansas limited liability company ("Assignor").

Recitals:

A. Assignor and Nationwide Life Insurance Company ("**Nationwide**") entered into that certain Construction Loan Agreement dated November 21, 2005, as amended by a First Amendment thereto dated as of June 12, 2006, a Second Amendment thereto dated as of December 20, 2006, and that certain Consent and Loan Modification Agreement dated as of January 31, 2008 (collectively, the "**Existing Loan Agreement**").

B. Pursuant to the Existing Loan Agreement Nationwide advanced to Assignor loans in the aggregate original principal amount of \$13,250,000 (collectively, the "**Existing Loans**").

C. To secure its obligations to Nationwide, Assignor, as mortgagor, granted to Nationwide, as mortgagee, *inter alia*, (i) that certain Construction Mortgage, Security Agreement and Fixture Filing dated as of November 28, 2005, which was filed for record on November 29, 2005 as Document No. FLM-PG: 28736609 with the Sedgwick County, Kansas Register of Deeds, as amended by a First Amendment to Mortgage and Assignment of Leases and Rents filed for record on June 12, 2006 as Document No. FLM-PG 28788983 with the Sedgwick County, Kansas Register of Deeds and a Second Amendment to Construction Mortgage and Assignment of Leases and Rents filed for record on December 28, 2006 as Document No. FLM-PG: 28845671 with the Sedgwick County, Kansas Register of Deeds (collectively, the "**Existing**

Fee Mortgage"); and (ii) that certain Assignment of Leases and Rents made as of November 28, 2005, which was filed for record on November 29, 2005 as Document No. FLM-PG: 28736610 with the Sedgwick County, Kansas Register of Deeds (the "**Existing Fee Lease Assignment**").

D. Subsequent to the funding of the Existing Loans and the execution and filing of the Existing Fee Lease Assignment and the Existing Fee Mortgage, in connection with the City of Wichita, Kansas ("**City**") issuing its Taxable Industrial Revenue Bonds, Series VI-A, 2006 (Old Town Lodging, LLC Project) and Taxable Industrial Revenue Bonds, Series VI-B, 2006 (Old Town Lodging, LLC Project), (i) Assignor conveyed to the City, fee title to the real estate located in Sedgwick County, Kansas that is more particularly described in Exhibit "A" attached hereto and by reference made a part hereof (the "**Fee Parcel**" or the "**Property**") subject to the Existing Fee Mortgage and the Existing Fee Lease Assignment, (ii) the City and Assignor entered into that certain Lease dated December 1, 2006 a Notice of Lease of which was filed for record on December 28, 2006 as Document No. FLM-PG: 28845674 with the Sedgwick County, Kansas Register of Deeds (collectively, the "**Ground Lease**") in respect of the Fee Parcel and (iii) the City assigned its interest, as lessor, in the Ground Lease to UMB Bank, N.A., Kansas City, Missouri, as Trustee.

E. The City is executing the Acknowledgement, Consent and Confirmation of City attached to this Assignment for the purpose of (i) demonstrating its acknowledgement of and consent to the transactions contemplated in this Assignment and (ii) confirming that its title to the Fee Parcel remains subject to and its interest in the Ground Lease shall continue to be subordinate in priority to the irrevocable assignment, lien and encumbrance of the Existing Fee Lease Assignment, the [**Assignment of Mortgage and Assignment of Leases and Rents**] and this Assignment.

F. UMB Bank, N.A., Kansas City, Missouri, Trustee, is executing the Acknowledgement, Consent and Confirmation of Trustee attached to this Assignment for the purpose of (i) demonstrating its acknowledgement of and consent to the transactions contemplated in this Assignment and (ii) confirmation of its agreement that the Ground Lease shall continue to be subordinate in priority to the irrevocable assignment, lien and encumbrance of the Existing Fee Lease Assignment, the [**Assignment of Mortgage and Assignment of Leases and Rents**] and this Assignment.

G. Pursuant to that certain Amended and Restated Loan Agreement of even date herewith (as hereafter amended, supplemented, refinanced or otherwise modified from time to time, the "**Loan Agreement**") among Assignor, as "Borrower" thereunder, and Wells Fargo Bank, National Association as "**Lender**" or "**Assignee**" and as successor in interest to Nationwide's interest in the Existing Loans, such parties have agreed to amend and restate in their entirety the terms and conditions of the Existing Loan Agreement and the Existing Loans, *inter alia*, to extend the maturity of the Existing Loans to October [___], 2014 (as such maturity date may be further extended to October ___, 2015 and October ___, 2016 subject to the terms of the Loan Agreement) and Lender agreed to make an additional loan that will be consolidated with the Existing Loans, all of which as assigned, amended, restated and extended, collectively is referred to herein as, the "**Loan**").

H. As of the Effective Date (as defined in the Loan Agreement), the aggregate unpaid consolidated principal balance of the Loan is Fifteen Million Dollars (\$15,000,000).

I. The Loan Agreement expressly provides that the Loan Agreement shall not be deemed to provide for or effect a novation or repayment and re-advance of any portion of the Existing Loans now outstanding, it being the intention of the parties thereto that the indebtedness owing under the Loan Agreement be and is the same indebtedness as that owing under the Existing Loan Agreement immediately prior to the effectiveness thereof.

J. Pursuant to the terms of the Loan Agreement and that certain [**Assignment of Mortgage and Assignment of Leases and Rents**] of even date herewith filed for record as Document No. FLM-PG _____ with the Sedgwick County, Kansas, Register of Deeds immediately prior to the filing of this Assignment, Nationwide has assigned its interest in the Existing Fee Lease Assignment and the Existing Fee Mortgage to Lender.

K. It is a condition to the effectiveness of the Loan Agreement that Assignor (i) executes and delivers that certain [Open-End] Mortgage of Real Property, Security Agreement of Personal Property, Assignment of Rents and Profits and Fixture Filing – Amendment and Restatement dated of even date herewith filed for record as Document No. FLM-PG _____ with the Sedgwick County, Kansas, Register of Deeds immediately prior to the filing of this Assignment (the “**Mortgage**”) to amend and restate the entirety of the terms and conditions of the Existing Fee Mortgage, it being the intention of Assignor, however, that the perfection and priority of the lien of the Existing Fee Mortgage shall not be affected by such amendment and restatement; and (ii) (with the consent and agreement of Lender hereinafter set forth) executes and delivers this Assignment to amend and restate the entirety of the terms and conditions of the Existing Fee Lease Assignment, it being the intention of Assignor, Lender and the City, however, that the perfection and priority of the irrevocable assignment, lien and encumbrance of the Existing Fee Lease Assignment shall not be affected by such amendment and restatement.

L. For the purposes of this Assignment:

- (i) Unless otherwise defined herein, capitalized terms used herein shall have the meanings assigned to such terms in the Loan Agreement;
- (ii) The promissory note executed and delivered by Assignor pursuant to Section 2.1 of the Loan Agreement from time to time to evidence the Loan is herein referred to as the “**Note**,”
- (iii) Wherever the term “**Loan Documents**” is used herein, it shall have the meaning of Loan Documents in the Loan Agreement;
- (iv) Loan Documents shall also include the Derivative Contract (as defined in the Loan Agreement) and any contract or agreement governing or providing for Bank Product Debt. As used herein, “**Derivative Contract**” shall have the meaning set forth in the Loan Agreement, including any separate interest rate cap or other interest rate hedging transaction entered into between Assignor and Lender, or any of its Subsidiaries or Affiliates or their successors, including pursuant to an ISDA Master Agreement, schedule and confirmation; and “**Bank Product Debt**” shall mean indebtedness and other obligations owing to Lender or an Affiliate of Lender arising from cash management services, including treasury, depository, overdraft, credit or debit card, electronic funds

transfer, automated clearing house transactions, controlled disbursement accounts and other cash management arrangements in the ordinary course of business; and

- (v) Lender as successor in interest to Nationwide is “**Assignee**” under the Existing Fee Lease Assignment as amended and restated by this Assignment; and, each of Lender, or any of its Affiliates that is counterparty under a Derivative Contract or the holder of Bank Product Debt, is an “**Assignee**” hereunder.

NOW THEREFORE, Assignor with an address of _____, _____, Wichita, Kansas _____, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, (i) does hereby confirm and ratify the absolute and unconditional assignment, transfer and setting over of the Existing Fee Lease Assignment and (ii) without interrupting or otherwise impairing or affecting the irrevocable assignment, lien and priority of the Existing Fee Lease Assignment, hereby absolutely and unconditionally re-assigns, re-transfers and re-sets over unto WELLS FARGO BANK, NATIONAL ASSOCIATION, having an address of _____, all of Assignor’s right, title and interest in and to any and all leases, subleases, licenses and concessions now or hereafter affecting all or any portion of the Property, including without limitation those leases set forth on Exhibit B attached hereto, together with all rents, receipts, issues, proceeds, revenues, payments and income arising from said leases, subleases, licenses and concessions, and any guarantees of the lessee’s, sublessee’s, licensee’s or concessionaire’s obligations under said leases, subleases, licenses and concessions and any and all other rents, receipts, issues, proceeds, revenues, payments and income arising from whatever source in connection with the use and occupation of and from all or any part of the Property (said leases, subleases, licenses, concessions and guarantees, all as now or hereafter amended, modified, renewed and extended are collectively referred to herein as the “Leases”).

THIS ASSIGNMENT is a present and irrevocable assignment and is made for the purpose of securing and providing a source of repayment and satisfaction of the following:

A. The Secured Obligations as that term is defined in the Mortgage, including, Assignor’s indebtedness and other obligations owed by Assignor to Assignee under and pursuant to the Note, the Loan Agreement, the Mortgage, any Derivative Contract, any Bank Product Debt or any other Loan Document, as any and all are extended, renewed, modified, amended or supplemented at any time and from time to time.

B. The performance and discharge of each and every obligation, covenant, and agreement of Assignor under each Loan Document.

Except as otherwise permitted in the Mortgage or the Loan Agreement, Assignor covenants with Assignee (a) to observe and perform all the obligations imposed upon the lessor under the Leases, (b) not to collect any of the rent, revenues, payments or income arising or accruing under the Leases or from the Property more than one month in advance, and (c) not to materially modify or terminate any Lease or execute any additional Lease without Assignee’s prior written consent, except to the extent provided in the Loan Agreement.

THIS ASSIGNMENT is made on the following terms, covenants and conditions:

1. So long as there shall exist no Event of Default under the Mortgage, Assignor shall have a revocable license to collect at the time of, but not prior to, one (1) month in advance of the date provided for the payment thereof (except for deposits for conferences, banquets and other special events), all rents, revenues, payments and income arising under the Leases or from the Property and to retain, use and enjoy the same as set forth herein. Such license shall be revoked by Assignee, without notice to Assignor, upon the occurrence of an Event of Default. Unless and until such license is revoked by Assignee, Assignor shall hold such rents, revenues, payments and income as a trust fund to be applied first to pay all sums promptly when due under the Note, the Loan Agreement and the Mortgage and then to pay all Gross Operating Expenses and capital expenditures relating to the Property. Any rents, revenues, payments and income received by Assignor after such revocation shall be immediately paid over to Assignee.

2. Upon or at any time while an Event of Default exists, Assignee, without in any way waiving such Event of Default, at its option (but with no obligation), without notice and without regard to the adequacy of the security for the principal sum, interest and indebtedness secured hereby and by the Mortgage, either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, subject to the terms of the Leases, may take possession of the Property and have, hold, manage, lease and operate the same on such terms and for such period of time as Assignee may deem proper. Additionally, Assignee, either with or without taking possession of the Property in its own name, may demand, sue for or otherwise collect and receive all rents, revenues, payments and income of the Property, including those past due and unpaid with full power to make from time to time, subject to the terms of the Leases, all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to the Assignee and to apply such rents, revenues, payments and income to the payment of (a) all reasonable expenses of managing the Property, including the salaries, fees and wages of a managing agent and such other employees as the Assignee may deem necessary or desirable, all taxes, charges, claims, assessments, water rents, sewer rents and any other liens, all ground rents, all premiums for all insurance which the Assignee may deem necessary or desirable, all reasonable costs of all alterations, renovations, repairs or replacements, and all reasonable expenses incident to taking and retaining possession of the Property; and (b) the principal sum, interest and indebtedness secured hereby and by the Mortgage, together with all costs and attorneys' fees, in such order of priority as to any of the items mentioned in this paragraph as Assignee, in its sole discretion, may determine. The exercise by Assignee of the option granted it in this paragraph and the collection of the rents, revenues, payments and income and the application thereof as herein provided shall not be considered a waiver of any incipient default or Event of Default by Assignor under the Note, the Loan Agreement, the Mortgage, or any other Loan Document. Furthermore, Assignor agrees that the exercise by Assignee of one or more of its rights and remedies hereunder shall in no way be deemed or construed to make Assignee a mortgagee in possession.

3. Except for losses sustained solely due to Assignee's gross negligence or willful misconduct. Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Property after an Event of Default or from any other act or omission of Assignee either in collecting the rents, revenues, payments and income hereunder or, if Assignee shall have taken possession of the Property, in managing the Property after an Event of

Default. Further, Assignee shall not be obligated to perform or discharge nor does Assignee hereby undertake to perform or discharge any obligation, duty or liability under the Leases or under or by reason of this Assignment. It is further understood that this Assignment shall not operate to place responsibility for the control, care, management or repair of the Property upon Assignee, nor for the carrying out of any of the terms and conditions of said Leases; nor shall it operate to make Assignee responsible or liable for any waste committed on the Property by the tenants or any other parties, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Assignor hereby agrees to indemnify and hold Assignee harmless from and against any and all liability, loss, or damage which Assignee may incur (a) under any of the Leases, (b) by reason of this Assignment, (c) arising from any action taken by Assignee pursuant to this Assignment, (d) as a result of any claims or demands which may be asserted against Assignee by reason of any alleged obligation or undertaking to be performed or discharged by Assignee under any of the Leases or this Assignment, or (e) the enforcement (or attempted enforcement) of this indemnity, except to the extent any such liability, loss, or damage is finally adjudicated by a court of competent jurisdiction to have been caused by Assignee's gross negligence or willful misconduct.

4. Upon payment in full of the principal sum, interest and indebtedness secured hereby and by the Mortgage, as evidenced by the recording of a full and absolute discharge of the Mortgage in the Office of the Register of Deeds of Sedgwick County, Kansas (prior to the vesting of title to the Property in Assignee, its successors and assigns or any purchaser of the Property at a foreclosure sale), this Assignment shall become and be void and of no effect. Assignor hereby irrevocably authorizes and directs the lessees now or hereafter named in the Leases, upon receipt from Assignee of written notice to the effect that Assignee is then the holder of the Note and that an Event of Default exists thereunder, to pay over to Assignee all rents, revenues, payments and income arising or accruing under the Leases or from the premises described therein or in the Mortgage and to continue to do so until otherwise notified by Assignee.

5. Assignee may take or release other security for the payment of the principal sum, interest and indebtedness secured hereby and by the Mortgage, may release any party primarily or secondarily liable therefor and may apply any other security held by it to the satisfaction of such principal sum, interest or indebtedness without prejudice to any of its rights, under this Assignment.

6. Assignor agrees that it will, upon demand from time to time therefor by Assignee, deliver to Assignee a certified copy of each and every Lease then affecting all or any part of the Property.

7. Nothing contained in this Assignment and no act done or omitted by Assignee pursuant to the powers and rights granted to it hereunder shall be deemed to be a waiver by Assignee of any of its rights and remedies under the Note, the Loan Agreement, the Mortgage or any other Loan Document. This Assignment is made and accepted without prejudice to any of such rights and remedies possessed by Assignee to collect the principal sum, interest and indebtedness secured hereby and to enforce any other security therefor held by it, and said rights

and remedies may be exercised by Assignee either prior to, simultaneously with, or subsequent to any action taken by Assignee hereunder.

8. Any notice which any party hereto may be required or may desire to give hereunder shall be delivered in accordance with the provisions of Section 13.4 of the Loan Agreement.

9. This Assignment and the obligations arising hereunder shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and performed in such state, except that with respect to the validity, priority and enforceability of the liens created by this Assignment and the provisions hereof which relate to realizing upon the Leases covered by this Assignment, the applicable provisions of this Assignment shall be governed by and construed in accordance with the laws of the State of Kansas, it being understood that, to the fullest extent permitted by the laws of such State, the laws of the State of New York shall govern the validity and enforceability of the obligations arising under this Assignment and the Loan Documents.

10. Time is of the essence with respect to each and every provision of this Assignment.

11. No change, amendment, modification, cancellation or change hereof shall be valid unless approved in writing by Assignee.

12. If any provision of this Assignment or the application thereof to any person or situation shall be held invalid or unenforceable to any extent, the remainder of this Assignment and the application of such provision to persons or situations other than those to which it shall have been held invalid or unenforceable shall not be affected thereby and shall continue to be valid and enforceable to the fullest extent permitted by applicable law.

13. ASSIGNOR HEREBY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, THE SUBJECT MATTER OF THIS ASSIGNMENT. THIS WAIVER IS KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY MADE BY ASSIGNOR, AND ASSIGNOR ACKNOWLEDGES THAT NO PERSON HAS MADE ANY REPRESENTATIONS OF FACT TO INDUCE THIS WAIVER OF TRIAL BY JURY OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT. THE ASSIGNOR SHALL NOT SEEK TO CONSOLIDATE, BY COUNTERCLAIM OR OTHERWISE, ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED. ASSIGNOR FURTHER ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED (OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED) IN THE SIGNING OF THIS ASSIGNMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, Assignor has executed this Assignment as of the date first written above.

ASSIGNOR:

Old Town Lodging, LLC

By: [•, as sole member]

Name:

Title:

Assignee Consent and Agreement

Assignee hereby accepts, consents and agrees to the foregoing Assignment of Leases and Rents Amendment and Restatement and its amendment of the Existing Fee Lease Assignment as of the day and year first above written.

ASSIGNEE:

Wells Fargo Bank, National Association

By: _____

Name: Jennifer A. Dakin

Title: Senior Vice President

STATE OF _____)

) SS.

COUNTY OF _____)

I, _____, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that [•], the [•] of [•], a [•] [limited liability company], which is the Manager of OLD TOWN LODGING, LLC, a Kansas limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such [•], appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as such officer of said corporation, as his/her own free and voluntary act and as the free and voluntary act of [•], a [•] [limited liability company], and as the free and voluntary act of OLD TOWN LODGING, LLC, a Kansas limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this ____ day of _____, 2011.

Notary Public

My Commission Expires:

STATE OF _____)

) SS.

COUNTY OF _____)

I, _____, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Jennifer A Dakin, Senior Vice President of WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association, as Administrative Agent, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Senior Vice President, appeared before me this day in person and acknowledged that she signed and delivered said instrument as such officer of said national association, as her own free and voluntary act and as the free and voluntary act of WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this ____ day of _____, 2011.

Notary Public

My Commission Expires:

ACKNOWLEDGEMENT, CONSENT AND CONFIRMATION OF CITY

The City of Wichita, Kansas, a Kansas municipal corporation (the “**City**”), hereby acknowledges and consents to the execution, delivery and recordation, of the foregoing Assignment of Leases and Rents – Amendment and Restatement (the “**Assignment**”) attached hereto, and to the transactions contemplated in the Assignment, and confirms that its title to the Property and interest in the Ground Lease remains subject to the irrevocable assignment, lien and encumbrance of the Existing Fee Lease Assignment, as the same is amended and restated by the terms and conditions of this Assignment. In connection therewith the City hereby represents and agrees, with and for the benefit of Assignor, Assignee and their respective successors and assigns, as follows:

1. The City is a municipal corporation existing under the laws of the State of Kansas.
2. The execution and delivery of this Acknowledgement, Consent and Confirmation has been approved by all necessary action of the City, and the City’s officer executing this Acknowledgement, Consent and Confirmation on its behalf has full authority to do so and to bind the City hereto.
3. The City is the fee simple owner of the Property.
4. The City (i) does hereby confirm the absolute and unconditional assignment, transfer and setting over of the Existing Fee Lease Assignment as the same is amended and restated by the Assignment and (ii) without interrupting or otherwise impairing or affecting the irrevocable assignment, lien and priority of the Existing Fee Lease Assignment, hereby acknowledges that the same (as amended and restated by the Assignment) continues in force and effect for the benefit of Lender and its successors and assigns on the Property, including, but not limited to, to all of its right, title and interest in and to any and all leases, subleases, licenses and concessions now or hereafter affecting all or any portion of the Property (all as now or hereafter are amended, modified, renewed or extended), together with all rents, receipts, issues, proceeds, revenues, payments and income arising from said leases, subleases, licenses and concessions, and any guarantees of the lessee’s, sublessee’s, licensee’s or concessionaire’s obligations under said leases, subleases, licenses and concessions and any and all other rents, receipts, issues, proceeds, revenues, payments and income arising from whatever source in connection with the use and occupation of and from all or any part of the Property.
5. The City expressly waives any right of redemption, including without limitation that provided by K.S.A. 60-2414(a).

IN WITNESS WHEREOF, the City has executed this ACKNOWLEDGEMENT,
CONSENT AND CONFIRMATION as of the date of the Assignment.

The City of Wichita, Kansas:

By: _____
Name:
Title:

ACKNOWLEDGEMENT, CONSENT AND CONFIRMATION OF TRUSTEE

I, the undersigned, _____, a duly authorized, qualified and acting _____ of UMB Bank, N.A., Kansas City, Missouri, as Trustee pursuant to the Trust Indenture dated December 1, 2006 entered into in connection with the issuance, by the City of Wichita, Kansas (the “City”), of Taxable Industrial Revenue Bonds, Series VI-A, 2006 (Old Town Lodging, LLC Project) and Taxable Industrial Revenue Bonds, Series VI-B, 2006 (Old Town Lodging, LLC Project) and as holder, by way of assignment from the City, of the lessor’s interest in the Lease dated December 1, 2006 (the “Lease”) by and between City of Wichita, Kansas (as original lessor) and Old Town Lodging, LLC (as lessee), hereby acknowledge and consent to the execution, delivery and recordation, of the Assignment of Leases and Rents – Amendment and Restatement (the “Assignment”) attached hereto and, hereby confirm and agree that it is the intent of the undersigned as holder of the lessor’s interest in the Lease, that the priority of the Lease shall continue to be subordinate to the irrevocable assignment, lien and encumbrance of the Assignment after such execution, delivery and recordation.

UMB Bank, N.A., Kansas City, Missouri, Trustee:

By: _____
Name:
Title:

EXHIBIT A

LEGAL DESCRIPTION

Real property in the City of Wichita, County of Sedgwick, State of Kansas, described as follows:

Parcel 1:

Lots 19, 20, 21, 22, 23 and 24, except the west 10 feet thereof, together with the vacated west 10 feet of Mosley Avenue adjoining said lots on the east, Block A, H.L. and Annie M. Taylor's Addition to the City of Wichita, Kansas, Sedgwick County, Kansas.

Parcel 2:

Lots 1, 2 and 3, except the north 0.73 feet of Lot 3; together with the west half of vacated alley abutting said property on the east, Block B, H.L. and Annie M. Taylor's Addition to the City of Wichita, Kansas, Sedgwick County, Kansas.

EXHIBIT B

LEASES

CLEVELAND/1241259.2
09/16/11

This instrument prepared by :

Jack C. Marvin
Stinson Morrison Hecker LLP
1625 N. Waterfront Parkway, Suite 300
Wichita, Kansas 67206

WHEN RECORDED RETURN TO:

Sherrie Courtney-Sanders
Wells Fargo Bank
2030 Main Street
Suite 500
Irvine, California 92614

**OPEN-END MORTGAGE OF REAL PROPERTY,
SECURITY AGREEMENT OF PERSONAL PROPERTY,
ASSIGNMENT OF RENTS AND PROFITS
AND FIXTURE FILING**

(FIXTURE FILING)
(Commercial Real Estate)

AMENDMENT AND RESTATEMENT

THIS OPEN-END MORTGAGE OF REAL PROPERTY, SECURITY AGREEMENT OF PERSONAL PROPERTY, ASSIGNMENT OF RENTS AND PROFITS AND FIXTURE FILING – AMENDMENT AND RESTATEMENT (this “**Mortgage**”) is dated as of the [•] day of October, 2011, by **OLD TOWN LODGING, LLC**, a Kansas limited liability company having its principal place of business at 820 East 2nd Street North, Wichita, Kansas 67202 (hereinafter referred to as the “**Mortgagor**”) in favor of **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association organized and existing under the laws of the United States of America, whose mailing address is 2030 Main Street, Suite 500, Irvine California 92614 (hereinafter referred to as “**Mortgagee**”).

Recitals:

A. The Mortgagor and Nationwide Life Insurance Company (“**Nationwide**”) entered into that certain Construction Loan Agreement dated November 21, 2005, as amended by a First Amendment thereto dated as of June 12, 2006, a Second Amendment thereto dated as of December 20, 2006, and that certain Consent and Loan Modification Agreement dated as of January 21, 2008 (collectively, the “**Existing Loan Agreement**”).

B. Pursuant to the Existing Loan Agreement Nationwide advanced to the Mortgagor loans in the aggregate original principal amount of \$13,250,000 (collectively, the “**Existing Loans**”).

C. To secure its obligations to Nationwide, the Mortgagor, as mortgagor, granted to Nationwide, as mortgagee, *inter alia*, that certain Construction Mortgage, Security Agreement and Fixture Filing dated as of November 28, 2005, which was filed for record on November 29, 2005 as Document No. FLM-PG: 28736609 with the Sedgwick County, Kansas Register of Deeds, as amended by a First Amendment to Mortgage and Assignment of Leases and Rents filed for record on June 12, 2006 as Document No. FLM-PG 28788983 with the Sedgwick County, Kansas Register of Deeds and a Second Amendment to Construction Mortgage and Assignment of Leases and Rents filed for record on December 28, 2006 as Document No. FLM-PG: 28845671 with the Sedgwick County, Kansas Register of Deeds (collectively, the “**Existing Fee Mortgage**”).

D. Subsequent to the funding of the Existing Loans and the execution and filing of the Existing Fee Mortgage, in connection with the City of Wichita, Kansas (the “City”) issuing its Taxable Industrial Revenue Bonds, Series VI-A, 2006 (Old Town Lodging, LLC Project) and Taxable Industrial Revenue Bonds, Series VI-B, 2006 (Old Town Lodging, LLC Project), (i) the Mortgagor conveyed to the City, fee title to the Fee Parcel (defined below), subject to the Existing Fee Mortgage, (ii) the City and the Mortgagor entered into that certain Lease dated December 1, 2006 a Notice of Lease of which was filed for record on December 28, 2006 as Document No. FLM-PG: 28845674 with the Sedgwick County, Kansas Register of Deeds (collectively, the “Bond Lease”) in respect of the Fee Parcel and (iii) the City assigned its interest, as lessor, in the Bond Lease to UMB Bank, N.A., Kansas City, Missouri, as Trustee.

E. The City is executing the Acknowledgement, Consent and Confirmation of City attached to this Mortgage for the purpose of (i) demonstrating its acknowledgement of and consent to the transactions contemplated in this Mortgage and (ii) confirming that its title to the Fee Parcel and interest in the Bond Lease remains subject to the lien of the Existing Fee Mortgage, as the same is amended and restated by the terms and conditions of this Mortgage.

F. UMB Bank, N.A., Kansas City, Missouri, Trustee, is executing the Acknowledgement, Consent and Confirmation of Trustee attached to this Mortgage for the purpose of (i) demonstrating its acknowledgement of and consent to the transactions contemplated in this Mortgage and (ii) confirmation of its agreement that the Bond Lease shall continue to be subordinate in priority to the lien of the Existing Fee Mortgage, the [**Assignment of Mortgage and Assignment of Leases and Rents**] and this Mortgage.

G. Pursuant to that certain Amended and Restated Loan Agreement of even date herewith (as hereafter amended, supplemented, refinanced or otherwise modified from time to time, the “Loan Agreement”) among the Mortgagor, as “Borrower” thereunder, and Mortgagee as “Lender” and as successor in interest to Nationwide’s interest in the Existing Loans, such parties have agreed to amend and restate in their entirety the terms and conditions of the Existing Loan Agreement and the Existing Loans, *inter alia*, to extend the maturity of the Existing Loans to October [], 2014 (as such maturity date may be further extended to October __, 2015 and October __, 2016 subject to the terms of the Loan Agreement) and Mortgagee agreed to make an additional loan that will be consolidated with the Existing Loans, all of which as assigned, amended, restated and extended, collectively is referred to herein as, the “Loan”).

H. As of the Effective Date (as defined in the Loan Agreement), the aggregate unpaid consolidated principal balance of the Loan is Fifteen Million Dollars (\$15,000,000).

I. The Loan Agreement expressly provides that the Loan Agreement shall not be deemed to provide for or effect a novation or repayment and re-advance of any portion of the Existing Loans now outstanding, it being the intention of the parties thereto that the indebtedness owing under the Loan Agreement be and is the same indebtedness as that owing under the Existing Loan Agreement immediately prior to the effectiveness thereof.

J. Pursuant to the terms of the Loan Agreement and that certain [**Assignment of Mortgage and Assignment of Leases and Rents**] of even date herewith filed for record as Document No. FLM-PG _____ with the Sedgwick County, Kansas, Register of Deeds immediately prior to the filing of this Mortgage, Nationwide has assigned its interest in the Existing Fee Mortgage to Mortgagee.

K. It is a condition to the effectiveness of the Loan Agreement that the Mortgagor (with the consent and agreement of Mortgagee hereinafter set forth) executes and delivers this Mortgage to amend and restate the entirety of the terms and conditions of the Existing Fee Mortgage, it being the intention of the Mortgagor, Mortgagee and the City, however, that the perfection and priority of the lien of the Existing Fee Mortgage shall not be affected by such amendment and restatement.

L. For the purposes of this Mortgage:

- (i) Unless otherwise defined herein, capitalized terms used herein shall have the meanings assigned to such terms in the Loan Agreement;
- (ii) The promissory note executed and delivered by the Mortgagor pursuant to Section 2.1 of the Loan Agreement from time to time to evidence the Loan is herein referred to as the “**Note**,”
- (iii) Wherever the term “**Loan Documents**” is used herein, it shall have the meaning of Loan Documents in the Loan Agreement;
- (iv) Loan Documents shall also include the Derivative Contract (as defined in the Loan Agreement) and any contract or agreement governing or providing for Bank Product Debt. As used herein, “**Derivative Contract**” shall have the meaning set forth in the Loan Agreement, including any separate interest rate cap or other interest rate hedging transaction entered into between a Mortgagor and Mortgagee, or any of its Subsidiaries or Affiliates or their successors, including pursuant to an ISDA Master Agreement, schedule and confirmation; and “**Bank Product Debt**” shall mean indebtedness and other obligations owing to Mortgagee or an Affiliate of Mortgagee arising from cash management services, including treasury, depository, overdraft, credit or debit card, electronic funds transfer, automated clearing house transactions, controlled disbursement accounts and other cash management arrangements in the ordinary course of business;
- (v) Each of Mortgagee, or any of its Affiliates that is counterparty under a Derivative Contract or the holder of Bank Product Debt, and Mortgagee is a “**Mortgagee**” hereunder and, collectively, the “**Secured Parties**,” and

- (vi) The Mortgagor's indebtedness and other obligations owed by the Mortgagor to any Mortgagee under and pursuant to the Note, the Loan Agreement, this Mortgage, any Derivative Contract, any Bank Product Debt or any other Loan Document, as any and all are extended, renewed, modified, amended or supplemented at any time and from time to time, are collectively the "**Secured Obligations.**"

Ratifications, Re-Grants and Agreements:

NOW, THEREFORE, to secure the payment, performance and observance by the Mortgagor of all of the Secured Obligations, and in order to continue the charge of the properties, interests and rights described in the Existing Fee Mortgage hereinbefore described with such payment, performance and observance, the Mortgagor does hereby execute and deliver this Mortgage and hereby (i) confirms and ratifies the grant, bargain, sale, mortgage and warrant, encumbrance, release, conveyance, assignment, transfer, hypothecation, pledge and setting over of the Existing Fee Mortgage and (ii) without interrupting or otherwise impairing or affecting the lien and priority of the Existing Fee Mortgage, hereby re-grants, re-bargains, re-sells, re-mortgages and re-warrants, re-encumbers, re-releases, re-conveys, re-assigns, re-transfers, re-hypothecates, re-pledges and re-sets over unto Mortgagee, its successors and assigns, for the benefit of the Secured Parties, forever, and transfers and grants to Mortgagee, its successors and assigns, for the benefit of the Secured Parties, forever, a security interest in, all of the estate, title and interest of the Mortgagor in and to the following:

1. The fee simple and easement estates of the Mortgagor in the real estate located in Sedgwick County, Kansas that is more particularly described in Exhibit "A" (the "**Fee Parcel**" or the "**Real Estate**") attached hereto and by reference made a part hereof, together with all present and future title, interests, estates and rights of the Mortgagor in and to the Real Estate and in and to lands lying in streets, alleys and roads adjoining the Real Estate.

2. All buildings, structures, improvements, privileges and appurtenances belonging thereto now existing or hereafter constructed on the Real Estate.

3. All easements, rights, rights of way, streets, ways, alleys, sewer lines, water lines and all estates, rights, titles, interests, privileges, hereditaments, access rights and appurtenances whatsoever in any way relating to or appertaining to any of the property described in Exhibit "A", or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by the Mortgagor, and the reversion or reversions, remainder and remainders, rents, issues, profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of the Mortgagor in and to the same.

(Hereinafter the properties contained in Paragraphs 1 through 3 shall collectively be referred to as the "**Mortgaged Premises**").

4. All furniture, fixtures, appliances, machinery, equipment and all personal property and any replacements and proceeds and substitutions thereof, owned by the Mortgagor and now located thereon, attached to, or hereafter acquired or located thereon

or attached thereto, and all lighting, heating, cooking, ventilating, air conditioning, incinerating, sprinkling and plumbing systems and all pipes, wires, attached fixtures and apparatus forming a part of or used in connection therewith, and all cooking appliances, cabinets, windows, doors and all wall to wall carpeting located on the Mortgaged Premises.

5. All judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the Mortgaged Premises or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Mortgaged Premises or the improvements thereon or any part thereof, or to any rights appurtenant thereto, including any award for change of grade or streets.

6. All goods, inventory, work in process, contract rights, cash, proceeds, profits, income, rents, issues, accounts, accounts receivable, general intangibles (including payment intangibles), fees, charges, lease agreements, lease payments, chattel paper, documents, instruments, letter of credit rights, software, software included in any personal property (along with supporting information), investment property, commercial tort claims, insurance proceeds, deposit accounts and other accounts, logos, licenses, trademarks, and all trade name agreements, and all replacements and cash and non-cash proceeds relating thereto now owned or hereafter acquired by the Mortgagor, in connection with the Mortgaged Premises and properties described in Exhibit "A", including but not limited to all rents, income and profits arising from the operation of any business and all fees, revenues, charges, accounts or other payments for the use or occupancy of guest rooms, meeting rooms, recreational facilities and other public facilities in any hotel, motel, or other lodging properties located on the Real Estate (funds obtained as such rents, income, profits, fees, charges, accounts or other payments and held in any reserve, account or credit balance shall retain the character of such rents, income, profits, fees, charges, accounts or other payments) and all receivables, customer obligations, installment payment obligations, deposits securing reservations, license, lease and concession fees and vending machine sales. The foregoing shall also include all documents, instruments, chattel paper, claims, deposits and general intangibles, as the foregoing terms are defined in the Uniform Commercial Code in effect from time to time, and all contract rights, franchises, books, records, files, plans, specifications, permits, franchise agreements, licenses, approvals, actions and telephone numbers, which now or hereafter relate to, are derived from or used in connection with the Real Estate, in the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business or activities thereon.

7. [Reserved]

8. All present and future purchase and sale agreements for the sale of any portion of the Mortgaged Premises or other property located on the Mortgaged Premises.

9. All development rights and credits, and any and all permits, consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Mortgaged Premises; all water and water

rights, wells and well rights, canals and canal rights, ditches and ditch rights, springs and spring rights, and reservoirs and reservoir rights appurtenant to or associated with the Mortgaged Premises, whether decreed or undecreed, tributary, non-tributary or not non-tributary, surface or underground or appropriated or unappropriated, and all shares of stock in water, ditch, lateral and canal companies, well permits and all other evidences of any of such rights; all deposits or other security now or hereafter made with or given to utility companies by the Mortgagor with respect to the Mortgaged Premises; all advance payments of insurance premiums made by the Mortgagor with respect to the Mortgaged Premises; all plans, drawings and specifications relating to the Mortgaged Premises; all loan funds held by Mortgagee, whether or not disbursed; all funds deposited with Mortgagee pursuant to any loan agreement; all reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind related to the Mortgaged Premises or any portion thereof; all of the Mortgagor's or either of their right, title and interest, now or hereafter acquired, to the payment of money from Mortgagee to the Mortgagor's or either of them under any swap, derivative, foreign exchange or hedge transaction or arrangement (or similar transaction or arrangement howsoever described or defined) at any time entered into between the Mortgagor or either of them and Mortgagee in connection with the Loan, as defined in the Loan Agreement, including, without limitation, the Derivative Contract.

10. All additions and accessions to, replacements and substitutions for, products of and proceeds from any of the foregoing.

(Hereinafter the items set forth in Paragraphs 4, 5, 6, 7, 8, 9 and 10 shall collectively be referred to as the "**Collateral**", which term shall include, as to the Mortgagor, the Mortgagor Article 9 Collateral, defined below.)

TO HAVE AND TO HOLD the Mortgaged Premises and Collateral, and all other properties hereinabove granted to Mortgagee, its successors and assigns, to its own proper use and benefit and the proper use and benefit of the other Secured Parties forever, subject however to the terms and conditions herein.

PROVIDED, HOWEVER, that these presents are upon the condition that, if the Mortgagor shall pay or cause to be paid to the Secured Parties the principal, interest and other charges provided in the Note and this Mortgage and the other Loan Documents, and shall pay and perform all of the other Secured Obligations at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by the Mortgagor, and shall keep, perform and observe all the covenants and promises in the Note and in this Mortgage expressed and the other Loan Documents to be kept, performed and observed, then Mortgagee shall cause this Mortgage to be satisfied and released of record.

AND, the Mortgagor covenant and agrees with Mortgagee and the other Secured Parties that:

ARTICLE I

PARTICULAR COVENANTS OF THE MORTGAGOR

1.1 Performance of the Note and Mortgage and the other Loan Documents. This Mortgage is given as security for the performance and observance of the covenants and agreements contained herein and in any other agreement executed by the Mortgagor to a Mortgagee in connection with any Secured Obligation, present and future, including but not limited to the principal of, interest on and other sums from time to time owing in connection with any present or future indebtedness and obligations of the Mortgagor to the Secured Parties and the indebtedness evidenced by or arising in connection with the Loan, the Note and the other Loan Documents and any and all extensions, renewals, increases, modifications, amendments, restatements and replacements, as applicable, of any of the Secured Obligations. The Mortgagor will perform, observe and comply with all provisions of the Note and this Mortgage and the other Loan Documents secured hereby and will duly and timely pay, without relief from any valuation or appraisal law, to Mortgagee, for the benefit of the Secured Parties, the sums of money expressed in the Note with interest thereon at the applicable rate set forth in the Note and all other sums required to be paid by the Mortgagor pursuant to the other Secured Obligations, all without any deductions or credit for taxes or other similar charges paid by the Mortgagor. Without limiting the generality of the foregoing, in the event the Mortgagor and Mortgagee, or any of its Affiliates, enter into any Derivative Contract, the Mortgagor shall be responsible for any and all obligations, contingent or otherwise, whether now existing or hereafter arising, of the Mortgagor to Mortgagee, or to any of its Affiliates or successors arising under or in connection with any such Derivative Contract, all of which obligations shall be secured by this Mortgage and entitled to all of the benefits and protections afforded to Mortgagee under or pursuant to this Mortgage. The Mortgagor agrees that for purposes of this Mortgage, any indebtedness and obligations which the Mortgagor may have to any Affiliate of Mortgagee in connection with any Derivative Contract or any Bank Product Debt shall be deemed to be indebtedness and obligations owed directly to such Lender and shall be secured by this Mortgage and may be collected and recovered by Mortgagee, for the benefit of such Affiliate, in any action to enforce this Mortgage as if such indebtedness and obligations were directly owed to Mortgagee.

1.2 Warranties and Representations.

(a) The Mortgagor hereby covenants with and represents and warrants to the Secured Parties that (i) the City is fee simple owner or owners of the Fee Parcel; (ii) the Mortgagor had and has full power and lawful right to convey the same as aforesaid; (iii) it shall be lawful for Mortgagee at all times peaceably and quietly to enter upon, hold, occupy and enjoy the Mortgaged Premises and every part thereof; (iv) the Mortgagor will make, or use commercially reasonable efforts to cause the City to make, such further assurances to perfect the fee simple title to the Mortgaged Premises and Mortgagee, as may be reasonably required; (v) the Mortgaged Premises is not subject to any lien, security interest or encumbrance in favor of any individual or private or governmental entity except for the lien of current taxes and assessments not delinquent, the lien of the Existing Mortgage; and the Permitted Exceptions (defined below); and (vi) the Mortgagor does hereby fully warrant the title to the Mortgaged

Premises and every part thereof and will defend the same against the lawful claims of all persons whomsoever, except for those matters set forth on the title commitment previously delivered to Mortgagee and as approved by Mortgagee (“**Permitted Exceptions**”).

(b) The Mortgagor is a limited liability company organized and existing and in good standing under the laws of the State of Kansas, and that the exact legal name of the Mortgagor is as set forth in the first paragraph of this Mortgage. The Mortgagor’s state organizational identification number is 2005082900604.

(c) The City is a municipal corporation existing under the laws of the State of Kansas.

1.3 Real Estate Taxes, Assessments and Personal Property Taxes.

(a) At any time following and during the continuance of an Event of Default, at Mortgagee's option and upon its demand, the Mortgagor, shall, until all Secured Obligations have been paid in full, deposit with Mortgagee in equal monthly installments, or annually or as otherwise directed by Mortgagee an amount reasonably estimated by Mortgagee to be equal to: (a) all taxes, assessments, levies and charges imposed by any public or quasi-public authority or utility company which are or may become a lien upon the Mortgaged Premises or Collateral and will become due for the tax year during which such payment is so directed; and (b) as provided under Section 1.6 hereof, premiums for fire, hazard and insurance required or requested pursuant to this Mortgage and the other Loan Documents when same are next due. If Mortgagee reasonably determines that any amounts deposited with Mortgagee by the Mortgagor pursuant to this Section 1.3 are insufficient for the payment in full of such taxes, assessments, levies, charges and/or insurance premiums, Mortgagee shall notify the Mortgagor of the increased amounts required to pay all amounts when due, whereupon the Mortgagor shall deposit with Mortgagee within thirty (30) days thereafter the additional amount as stated in Mortgagee's notice. All sums so paid shall not bear interest, except to the extent and in any minimum amount required by law; are pledged as additional security for the Secured Obligations; and Mortgagee shall, unless an Event of Default otherwise is continuing hereunder or under any Loan Document, apply said funds to the payment of, or at the sole option of Mortgagee release said funds to the Mortgagor for the application to and payment of, such sums, taxes, assessments, levies, charges, and insurance premiums. Upon the occurrence of an Event of Default hereunder or under any Loan Document, Mortgagee may apply all or any part of said sums to any Secured Obligation and/or to cure such Event of Default, in which event the Mortgagor shall be required to restore all amounts so applied, as well as to cure any other events or conditions constituting an Event of Default not cured by such application. Upon assignment of this Mortgage, Mortgagee shall have the right to assign all amounts deposited with it by the Mortgagor and in its possession to its assignee whereupon Mortgagee shall be released from all liability with respect thereto. Within forty-five (45) days following full repayment of the Secured Obligations (other than full repayment of the Secured Obligations as a consequence of a foreclosure or conveyance in lieu of foreclosure of the liens and security interests securing the Secured Obligations) or at such earlier time as Mortgagee may elect, the balance of all amounts collected and in Mortgagee's possession shall be paid to the Mortgagor and no other party shall have any right or claim thereto.

(b) Except as provided in (a) above, the Mortgagor shall pay when due according to law, all taxes, assessments and other charges which are now due or may hereafter be imposed or assessed against the Mortgaged Premises and the Collateral. Upon reasonable request, the Mortgagor will promptly send to Mortgagee receipts for the payment of all such taxes, assessments and other charges. Upon the failure of the Mortgagor to pay such taxes, assessments and other charges on or before the same are due, Mortgagee shall have the option to pay and discharge same without notice to the Mortgagor. Any sums so expended by Mortgagee shall at once become an indebtedness of the Mortgagor and shall be due and payable by the Mortgagor with interest at the rate applicable to the principal balance of the Note, which sums shall thereupon become secured by this Mortgage. Notwithstanding the foregoing, the Mortgagor shall have the right to contest in good faith by appropriate legal or other proceedings the validity or amount of any such tax, assessment, charge or imposition, provided that (a) the Mortgagor gives Mortgagee prior written notice of its intent to contest the same, (b) if requested by Mortgagee, the Mortgagor demonstrates to the reasonable satisfaction of Mortgagee that such legal or other proceedings shall operate to prevent the sale of the Mortgaged Premises or Collateral (or any portion thereof) to satisfy the payment of the tax, assessment, or charge in question prior to final determination of such proceedings and (c) if requested by Mortgagee, the Mortgagor provide a sufficient undertaking pursuant to Section 8.18 of the Loan Agreement and as may be required or permitted by law to accomplish the discharge or release of any lien which may attach to the Mortgaged Premises as a result of such matters.

1.4 Other Taxes, Liens and Utility Charges.

(a) The Mortgagor will pay promptly, when and as due, all charges for utilities, whether public or private, and will promptly exhibit to Mortgagee, upon reasonable request, receipts for the payment of all taxes, assessments, water and sewer charges, dues, fines and impositions of every nature whatsoever imposed, levied or assessed or to be imposed, levied or assessed upon or against the Mortgaged Premises and the Collateral, or any part thereof, or upon the interest of the Mortgagor or the City in the Mortgaged Premises (other than any of the same for which provision has been made in Section 1.3 of this Article I), as well as all income taxes, assessments and other governmental charges lawfully levied and imposed by the United States of America or any State, county, municipality or other taxing authority upon the Mortgagor in respect of the Mortgaged Premises and the Collateral or any part thereof, or any charge which, if unpaid, would become a lien or charge upon the Mortgaged Premises and the Collateral prior to or equal to the lien of this Mortgage for any amounts secured hereby or which would have priority or equality with this Mortgage in distribution of the proceeds of any foreclosure sale of the Mortgaged Premises and the Collateral or any part thereof. Notwithstanding the foregoing, the Mortgagor shall have the right to contest in good faith by appropriate legal or other proceedings the validity or amount of any such tax, assessment, charge or imposition, provided that (a) the Mortgagor gives Mortgagee prior written notice of its intent to contest the same, (b) if requested by Mortgagee, the Mortgagor demonstrates to the reasonable satisfaction of Mortgagee that such legal or other proceedings shall operate to prevent the sale of the Mortgaged Premises or Collateral (or any portion thereof) to satisfy the payment of the tax, assessment, or charge in question prior to final determination of such proceedings and (c) if requested by Mortgagee, the Mortgagor provides a sufficient undertaking as may be required or permitted by law to accomplish the discharge or release of any lien which may attach to the Mortgaged Premises as a result of such matters.

1.5 Prohibition Against Liens. The Mortgagor will not suffer any mechanic's, laborer's, statutory or other liens, or any mortgage or other lien which might or could be prior to, equal to, or subordinate to the lien of this Mortgage to be created or to remain outstanding upon any of the Mortgaged Premises; provided, however, that the Mortgagor shall have the right to contest in good faith by appropriate legal or other proceedings the validity or amount of any mechanic's, laborer's, statutory or other lien imposed upon all or any portion of the Mortgaged Premises on account of work performed in, on or about the Mortgaged Premises, but only so long as (a) the Mortgagor gives Mortgagee prior written notice of its intent to contest the same, (b) if requested by Mortgagee, the Mortgagor demonstrates to the reasonable satisfaction of Mortgagee that such legal or other proceedings shall operate to prevent the sale of the Mortgaged Premises (or any portion thereof) to satisfy payment of the amount being contested prior to final determination of such proceedings, and (c) if requested by Mortgagee, the Mortgagor provides a sufficient undertaking as may be required or permitted by law to accomplish the discharge or release of any such lien as to the Mortgaged Premises.

1.6 Insurance. The Mortgagor will, at its expense, keep the Mortgaged Premises and the Collateral, adequately insured at all times against such risks as are customarily insured against by entities engaged in similar businesses. Without limiting the foregoing, the Mortgagor will (a) keep the Mortgaged Premises and the Collateral fully insured against fire, theft and extended coverage risks (all hazards included within the term "all risks coverage"), and if the Mortgaged Premises are determined to be in a flood plain or flood prone area, flood insurance, in an amount sufficient to prevent the Mortgagor or Mortgagee from becoming a co-insurer of any partial loss under applicable insurance policies and in any event not less than one hundred percent (100%) of the full replacement value (actual replacement value without deduction for physical depreciation, but exclusive of the cost of excavation, footings, foundation and underground utilities) thereof; provided, however, in no event less than the then aggregate outstanding principal amount of the Loan; (b) maintain all such workers' compensation or similar insurance as may be required by law, (c) maintain rental interruption insurance coverage equal to or greater than six (6) months of income from the Mortgaged Premises and Collateral; (d) maintain personal property insurance in an amount as Mortgagee shall reasonably request; and (e) maintain general public liability insurance in respect of the Mortgaged Premises and the Collateral against claims for personal and bodily injury, death or property damage occurring, in or about the Mortgaged Premises and the Collateral and liability insurance covering the operations of the Mortgagor conducted on or about the Mortgaged Premises and the Collateral in an amount as is reasonably acceptable to Mortgagee. All policies of insurance shall be placed with insurance companies satisfactory to Mortgagee and shall have attached thereto the standard form of "mortgagee clause," without contribution, in favor of Mortgagee and be delivered to and be held by Mortgagee, which policy shall provide that no cancellation, modification, termination or lapse thereof shall be effective until at least thirty (30) days after receipt by Mortgagee of written notice thereof. Such insurance policies may be maintained on a blanket basis covering other properties as long as all terms and conditions of this Mortgage relating to insurance requirements are otherwise satisfied. This Mortgage shall operate as an assignment to Mortgagee, for the benefit of the Secured Parties, of said policies, whether delivered or not. The Mortgagor shall provide evidence of fully paid insurance policies at least fifteen (15) days prior to the expiration date of any insurance policy(ies). Upon the failure of the

Mortgagor to provide the aforesaid insurance, Mortgagee shall have the option (but not the duty) to procure and maintain such insurance or a mortgagee interest policy without notice to the Mortgagor. Any sums so expended by Mortgagee shall at once become indebtedness owing from the Mortgagor to Mortgagee and shall immediately become due and payable by the Mortgagor with interest thereon at the rate applicable to the principal balance of the Note, to the extent legally enforceable. If Mortgagee acquires title to the Mortgaged Premises by foreclosure proceedings or otherwise, any unearned premiums on any hazard insurance covering the Mortgaged Premises are hereby assigned to and shall belong to Mortgagee, for the benefit of the Secured Parties. If at any time during the term of this Mortgage, any insurance policies shall be cancelled and returned premiums available, these returned premiums shall be retained by Mortgagee to the extent required to reimburse Mortgagee for any sums advanced by Mortgagee to purchase insurance required by this Section and the balance may be used by Mortgagee to satisfy any other defaults by the Mortgagor hereunder. Any rights of Mortgagee to any insurance proceeds shall in no way be affected or impaired by reason of the fact that Mortgagee may have instituted foreclosure proceedings hereunder. Following and during the continuance of an Event of Default hereunder and upon demand by Mortgagee as provided in Section 1.3(a) hereof, the Mortgagor shall pay to Mortgagee such sums as are provided for in Section 1.3(a) hereof.

1.7 Distribution of Insurance Proceeds. In the event of any casualty from which the insurance proceeds exceed \$35,000, the Mortgagor will give prompt notice to Mortgagee, and will commence proof of loss with the casualty insurer. Mortgagee reserves the right to direct and approve all proof of loss and claims procedures for claims reasonably determined by Mortgagee to exceed \$500,000. If proof of loss is not made promptly by the Mortgagor, Mortgagee is authorized by the Mortgagor to do so. Each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Mortgagee and not to the Mortgagor and Mortgagee jointly. The term “Net Proceeds” for purposes of this Section 1.7 shall mean: the net amount of all insurance proceeds under the policies carried pursuant to Section 1.6 of this Mortgage as a result of such damage or destruction, after deduction of Mortgagee’s reasonable costs and expenses (including, but not limited to reasonable counsel fees), if any, in collecting the same.

(a) In the instance of any casualty the claim for which reasonably is determined by Mortgagee to be an amount equal to or less than \$500,000 and all of the following provisions (i) through (____) are true or achieved, as the case may be, then the Net Proceeds shall be disbursed directly to the Mortgagor:

(i) No Event of Default shall have occurred and be continuing under the Note, this Mortgage or any of the other Loan Documents;

(ii) The Mortgaged Property and the use thereof, after the restoration and repair of the damaged Mortgaged Premises or repair or replacement of the damaged Collateral, will be in compliance with, and permitted under, all applicable zoning, environmental and other laws, ordinances, rules and regulations;

(iii) The Net Proceeds, together with any cash or cash equivalent deposited by the Mortgagor with Mortgagee, are sufficient to cover the cost of the restoration and repair of the damaged Mortgaged Premises and repair or replacement of the damaged Collateral as such costs are reasonably determined by Mortgagee based on, at a minimum, two estimates of the cost of the restoration and repair of the damaged Mortgaged Premises or repair or replacement of the damaged Collateral each accompanied by an independent architect's certification as to such costs and appropriate plans and specifications for the restoration and repair of the damaged Mortgaged Premises or repair or replacement of the damaged Collateral;

(iv) Mortgagee is satisfied that any operating deficits, including all scheduled payments of principal and interest under the Note, which will be incurred with respect to the Mortgaged Property as a result of the occurrence of any such fire or other casualty, will be covered out of (1) the Net Proceeds or (2) other funds of the Mortgagor or a combination of both;

(v) Mortgagee is satisfied that, upon the completion of the restoration and repair of the damaged Mortgaged Premises and repair or replacement of the damaged Collateral, the net cash flow of the Mortgaged Property will be restored to a level sufficient to cover all carrying costs, Gross Operating Expenses of the Mortgaged Property, including, without limitation, debt service on the Note, all reserves and Property Improvement Plans; and

(vi) The restoration and repair of the damaged Mortgaged Premises or repair or replacement of the damaged Collateral reasonably can be completed on or before the earliest to occur of (A) six (6) full calendar months prior to the Maturity Date and (B) such time as may be required under applicable zoning, environmental or other law, ordinance, rule or regulation in order to repair and restore the Mortgaged Property and the Collateral to as nearly as possible the condition it was in immediately prior to such fire or other casualty.

(b) In the instance of any casualty the claim for which reasonably is determined by Mortgagee to be an amount greater than \$500,000, the insurance proceeds shall be distributed to Mortgagee and shall be applied to restoration and repair of the damaged Mortgaged Premises or repair or replacement of the damaged Collateral, as the case may be, provided that (i) the Mortgagor and Mortgagee reasonably agree that such restoration and repair on one hand and repair or replacement on the other hand is economically feasible and reasonable, (ii) Mortgagee reasonably determines that its security will not be lessened or impaired thereby, (iii) no Event of Default has occurred and then is continuing, and (iv) Mortgagee reasonably determines that the Net Proceeds shall be adequate to pay all estimated costs of restoration and repair of the Mortgaged Premises and repair or replacement of the Collateral, or the Mortgagor shall deposit with Mortgagee sums sufficient, in Mortgagee's reasonable opinion, when added to such Net Proceeds, to pay all such estimated costs; otherwise such Net Proceeds shall be applied to the reduction of the Secured Obligations (such reductions applicable to such portions of the Secured Obligations, and in such order, as Mortgagee may elect), whether matured or unmatured. The proceeds of

insurance and any sums deposited by the Mortgagor with Mortgagee as aforesaid shall be held by Mortgagee and disbursed in payment of the costs of such restoration and repair of the Mortgaged Premises or repair or replacement of Collateral in accordance with such procedures and subject to such conditions as Mortgagee shall reasonably require. Any Net Proceeds in excess of the costs of restoration and repair of the Mortgaged Premises and repair or replacement of Collateral shall, at the option of Mortgagee, be applied to the reduction of the Secured Obligations or paid to the person legally entitled thereto.

(c) Regardless of whether such Net Proceeds are greater than or less than \$500,000, if such proceeds are to be applied to restoration and repair of the Mortgaged Premises or repair and replacement of Collateral, or both, as the case may be, the Mortgagor covenants and agrees promptly to commence the restoration and repair of such damaged Mortgaged Premises and repair or replacement of Collateral to substantially the same condition as existed prior to such casualty, except as otherwise reasonably approved in writing by Mortgagee, and to diligently prosecute such restoration and repair of the Mortgaged Premises or repair and replacement of Collateral to completion, paying all costs thereof that the Net Proceeds and any other sums deposited by the Mortgagor with Mortgagee may be insufficient to pay. If at any time or times Mortgagee reasonably determines that the Net Proceeds and such sums deposited by the Mortgagor may be insufficient to pay in full all estimated costs of restoration and repair of the Mortgaged Premises and repair or replacement of Collateral, the Mortgagor shall on demand deposit with Mortgagee such additional sums as Mortgagee reasonably deems necessary to pay all such estimated costs. The Mortgagor hereby covenants that any such restoration and repair of the Mortgaged Premises shall be done in a good and workmanlike manner, will maintain the Mortgaged Premises and the Collateral lien-free in accordance with the covenants and agreements set forth in this Mortgage and will submit plans and design and construction contracts for such restoration and repair of the Mortgaged Premises and repair or replacement of Collateral to Mortgagee for Mortgagee's prior written approval, which approval shall not be unreasonably withheld or delayed

(d) Notwithstanding the covenants and agreements otherwise set forth in this Section 1.7, in the event of any casualty from which the restoration and repair of the Mortgaged Premises and repair and replacement of Collateral cannot be completed at least six (6) full calendar months before the Maturity Date, Mortgagee hereby reserves and shall have the right to apply all or any part of the insurance proceeds resulting from any such casualty to any Secured Obligation.

1.8 Good Condition and Repair. The Mortgagor shall keep the Mortgaged Premises and the Collateral in good condition and repair (ordinary wear and tear excepted) and shall comply with all laws, ordinances, and regulations of all public authorities relating to the Mortgaged Premises and the Collateral, comply with all easements, declarations, covenants and any other private agreements imposing duties or obligations on owners or occupants of the Mortgaged Premises, and shall not suffer any waste to be committed thereon nor remove or demolish any building. The Mortgagor shall permit Mortgagee (and any Affiliate that is a Mortgagee hereunder) to enter upon the Mortgaged Premises and inspect the Mortgaged Premises and Collateral at all reasonable hours reasonable notice to the Mortgagor. The Mortgagor shall comply with the provisions of any lease if this Mortgage is

on a leasehold. The Mortgagor shall not cause or permit any improvements to be materially altered or changed without the prior written consent of Mortgagee to the proposed action, as well as Mortgagee's prior written consent to the plans and specifications relating thereto, which consent will not be unreasonably withheld, conditioned or delayed. The Mortgagor shall not consent to any subdivision of the Mortgaged Premises or any zoning change or variance affecting the Mortgaged Premises without the prior written consent of Mortgagee, which consent will not be unreasonably withheld, conditioned or delayed.

1.9 Condemnation. If all or any part of the Mortgaged Premises or Collateral or both hereunder is taken or damaged by the exercise of the power of eminent domain, the Mortgagor may contest the same in good faith so long as no Event of Default has occurred and then is continuing; provided, however, the award for any property so taken is hereby assigned to Mortgagee, and Mortgagee, upon such award becoming final, is hereby authorized, in the name of the Mortgagor, to execute and deliver acquittances for, and release of, any such award and to collect the proceeds. If any part of the Mortgaged Premises or Collateral shall be so taken or damaged, and if (i) Mortgagee reasonably determines that its security will not be lessened or impaired, (ii) no Event of Default has occurred and then is continuing, and (iii) Mortgagee reasonably determines that the award shall be adequate to pay all estimated costs of restoration, replacement and repair, or the Mortgagor has deposited with Mortgagee sums sufficient, in Mortgagee's reasonable opinion, when added to such award, to pay all such estimated costs, then such award shall be used to restore, replace and repair the taken or damaged Mortgaged Premises and Collateral; otherwise such award shall be applied to the payment of the Secured Obligations (such application to be in such order as Mortgagee may elect), principal or interest, whether matured or unmatured, and the remainder, if any, shall be paid to the Mortgagor or such other party or parties as may be legally entitled thereto. If such award is to be applied to restoration, replacement and repair, the Mortgagor covenants and agree to promptly commence the restoration, replacement and repair of the taken or damaged Mortgaged Premises and Collateral and to diligently prosecute such restoration, replacement and repair to completion, paying all costs thereof that the award and other sums deposited by the Mortgagor with Mortgagee may be insufficient to pay. If at any time or times Mortgagee reasonably determines that the award and such sums deposited by the Mortgagor may be insufficient to pay in full all estimated costs of restoration, replacement and repair, the Mortgagor shall on demand deposit with Mortgagee such additional sums as Mortgagee reasonably deems necessary to pay all such estimated costs. The Mortgagor will submit plans and design and construction and other contracts for such restoration, replacement and repair to Mortgagee for Mortgagee's prior written approval, which approval will not be unreasonably withheld, conditioned or delayed. The award and any sums deposited by the Mortgagor with Mortgagee as aforesaid shall be held by Mortgagee and disbursed in payment of the costs of such restoration, replacement and repair in accordance with such procedures and subject to such conditions as Mortgagee reasonably shall require. Any portion of the award in excess of the costs of restoration, replacement and repair shall, at the option of Mortgagee, be applied to the reduction of the Secured Obligations or paid to the person legally entitled thereto. **[ADD LANGUAGE REGARDING CASUALTY IN LAST 180 DAYS, PROCEEDS MAY BE APPLIED IN MORTGAGEE'S DISCRETION TO SECURED OBLIGATIONS.]**

1.10 No Acquisition or Disposition of Personal Property. The Mortgagor will not make, suffer or permit, without the prior written consent of Mortgagee, any sale, purchase, conditional sale, transfer, lease or agreement under which title is reserved in the vendor, of any fixtures, apparatus, machinery, equipment or personal property comprising the Collateral, except in the ordinary course of business and if replaced with like-kind Collateral.

1.11 Protection of Mortgaged Premises and Collateral. The Mortgagor will from time to time execute and deliver all such supplements and amendments hereto (including Financing Statements and Continuation Statements) and other instruments, and will take such other action, as Mortgagee reasonably requests and reasonably deems necessary or advisable to (a) grant to Mortgagee all of the Mortgaged Premises and the Collateral, as security for the Secured Obligations; (b) maintain or preserve the lien of this Mortgage or carry out more effectively the purposes hereof; and (c) preserve and defend title to the Mortgaged Premises and the Collateral and the rights of Mortgagee therein against the claims of all persons and parties.

1.12 Affirmative Covenants of the Mortgagor. The Mortgagor covenants and agrees that during the term of this Mortgage, and until all of the principal amount and interest due on the Note and the other Secured Obligations shall have been duly paid in full, and except as specifically hereinafter provided to the contrary, it will, unless Mortgagee shall otherwise consent in writing:

(a) **Leases.** Timely perform and observe all material terms, covenants, conditions and agreements contained in any lease or leases now or hereafter affecting the Mortgaged Premises or any portion thereof which are required to be observed and performed by the Mortgagor.

(b) **Expenses.** Pay or reimburse each Mortgagee, upon demand therefor, for all reasonable attorneys' fees, costs and expenses actually incurred by such Mortgagee in any suit, action, legal proceeding or dispute of any kind in which such Mortgagee is made a party or appears as a party plaintiff or defendant, affecting the Secured Obligations, this Mortgage or the interest created herein, or the Mortgaged Premises, including, but not limited to any action to protect the security hereof; and any such amount paid by such Mortgagee shall be added to the indebtedness secured by the lien of this Mortgage.

(c) **Books, Records, Accounts and Annual Reports.** Keep and maintain proper and adequate books, records and accounts reflecting all items of income and expense, including all supporting facts relating to the operation of the Mortgaged Premises and the Collateral. Mortgagee shall have the right from time to time, at all times during normal business hours, upon reasonable prior written notice, to examine all such records, books and accounts on the Mortgaged Premises, or at such other place or with such other person or entity maintaining such books, records and accounts and to make copies or abstracts thereof as Mortgagee shall desire. With respect to the Mortgaged Premises and the Collateral, the Mortgagor will, upon Mortgagee's request, from time to time furnish to Mortgagee operating statements, rent rolls and reports in form and content reasonably requested by Mortgagee. The Mortgagor shall furnish Mortgagee with such other financial information concerning it as Mortgagee may reasonably request.

(d) **Additional Indebtedness.** The Mortgagor agrees to pay or reimburse Mortgagee, upon demand therefor, for any and all losses, damages, costs, expenses, fees, duties, taxes (except Federal Income Taxes), penalties, assessments of other charges (hereinafter referred to as “**Liabilities**”) at any time suffered by, imposed upon, assessed or levied against the Mortgaged Premises or Mortgagee by any governmental authority or agency relating to, arising from or in connection with the execution and delivery of the Note and the recording of this Mortgage, including, but not limited to, liabilities arising from any applicable law or statute relating to the making of the Loan, the perfection of the security documents or the enforcement thereof. Any such liability so incurred or paid by Mortgagee shall constitute an additional indebtedness secured by this Mortgage. The Mortgagor shall pay for the cost of recording any release or partial release(s) of this Mortgage, plus a Fifty Dollar (\$50.00) processing fee for each such release or partial release.

(e) **Transfer and Encumbrance.** Except as permitted under the Loan Agreement, the Mortgagor shall not make, create or suffer to be made or created, any sale, transfer, conveyance, lease or assignment of the Mortgaged Premises, or any interest therein (such restriction shall not apply to the renting of hotel rooms in the ordinary course of business).

(f) **Maintain Existence.** The Mortgagor shall remain in good standing under the laws of the state of its incorporation or organization, as the case may be. The Mortgagor shall not voluntarily or involuntarily dissolve, cancel or terminate its legal existence or change the state of its incorporation or organization, as the case may be.

(g) **Legal Name.** The Mortgagor shall not change its legal name without providing Mortgagee with not less than sixty (60) days prior written notice.

(h) **Franchise Agreements.** The Mortgagor shall timely perform and observe all material terms, covenants, conditions and agreements contained in the Franchise Agreement or any other any franchise, license agreement or other agreement entered into for the operation of a hotel or motel on the Mortgaged Premises which are required to be observed and performed by such Mortgagor.

1.13 Environmental Representation. The Mortgagor hereby covenants and represents that, to the Mortgagor’s knowledge, except as disclosed to Mortgagee in the Environmental Report or the Property Condition Report, (a) the Mortgaged Premises presently complies with, in all material respects, all applicable federal, state or local environmental, health and safety statutes and regulations with which non-compliance would have a material adverse effect on the Mortgaged Premises; (b) the Mortgaged Premises is not subject to any judicial or administrative proceeding alleging the violation of any federal, state or local environmental, health or safety statute or regulation, which violation would have a material adverse effect on the Mortgaged Premises; (c) the Mortgaged Premises is not the subject of a federal or state investigation regarding the need for any remedial action to respond to a release of any hazardous or toxic wastes, substance or constituent, or other substance into the environment which remedial action would have a material adverse effect on the Mortgaged Premises; (d) the Mortgagor has not filed any notice under any federal or state law indicating past or present treatment, storage or disposal of a hazardous waste, or reporting a spill or release of a hazardous or toxic waste, substance or constituent, or other

substance into the environment; (e) hazardous waste or substance has not been disposed of by placing it in or on the ground of the Mortgaged Premises; and (f) there are no underground storage tanks or surface impoundments on the Mortgaged Premises.

1.14 Notice of Environmental Accident. Promptly after learning of the occurrence of any of the following, the Mortgagor shall give Mortgagee written notice thereof, describing the same and the steps being taken by the Mortgagor with respect thereto: (a) the happening of any event involving the spill, release, leak, seepage, discharge or cleanup of any hazardous or toxic waste, substance or constituent; (b) any litigation, arbitration proceeding, or governmental proceeding arising from an environmental accident; (c) notice that either Mortgagor's operations on the Mortgaged Premises are not in compliance with requirements of applicable federal, state or local environmental, health and safety statutes and regulations; (d) notice that either Mortgagor is subject to federal or state investigation evaluating whether any remedial action is needed to respond to the release of any hazardous or toxic waste, substance or constituent, or asbestos or other substance from the Mortgaged Premises into the environment; or (e) notice that the Mortgaged Premises are subject to a lien in favor of any governmental entity for (i) any liability under federal or state environmental laws or regulations or (ii) damages arising from or costs incurred by such governmental entity in response to a release of a hazardous or toxic waste, substance or constituent, or other substance into the environment.

1.15 Wetlands. The Mortgagor hereby covenants and represents that, (a) to the Mortgagor's knowledge, it is in compliance with all federal laws relating to "Wetlands" as defined in 33 C.F.R. §328.3, as hereinafter amended, and in any comparable state and/or local law, statute or ordinance, rule or regulation pertaining to such Wetlands, and (b) the Mortgagor shall not perform or cause to be performed any excavation or fill activity or other acts which would in any way destroy, eliminate, alter, obstruct, interfere with or otherwise affect any Wetlands.

1.16 ADA. The Mortgagor hereby covenants and represents that (a) to the Mortgagor's knowledge, except as disclosed to Mortgagee in the Property Condition Report, it is in compliance with the Americans With Disabilities Act ("ADA") and all rules and regulations pertaining thereto, and (b) the Mortgagor shall at all times hereafter continue to comply with all requirements of ADA.

1.17 No Agricultural Use. The Mortgagor covenants that the Mortgaged Premises and Collateral shall not be used for either agricultural or farming purposes.

1.18 Kansas Specific Provisions. Notwithstanding anything contained herein to the contrary:

(a) The Mortgagor expressly waives any right of redemption, including without limitation that provided by K.S.A. 60-2414(a).

ARTICLE II

SECURITY INTEREST IN COLLATERAL

2.1 Security Agreement. (a) In addition to, and without limiting or impugning the efficacy of, the liens and security interests granted by the Mortgagor in Article I, above, the Mortgagor does hereby agree and declare that this Mortgage shall constitute a security agreement securing the Secured Obligations encumbering each and every item of the Mortgagor Article 9 Collateral (defined below) in accordance with the provisions of the Uniform Commercial Code. The remedies for any Event of Default or Default (as applicable) under this Mortgage, the Note and the other Loan Documents shall be (i) as prescribed in this Mortgage; (ii) as prescribed by general law; or (iii) as prescribed by the specific statutory consequences now or hereafter enacted and specified in the said Uniform Commercial Code in effect from time to time, all at Mortgagee's sole election.

(b) It is intended by the Mortgagor that this Mortgage constitute a fixture filing to the extent permitted under the Uniform Commercial Code as adopted in the State where the Mortgaged Premises are located as to all fixtures owned by either Mortgagor actually or constructively attached to the Mortgaged Premises.

2.2 Grant of Security Interest in the Mortgagor Article 9 Collateral.

(a) The Mortgagor hereby grants to Mortgagee, for itself and for the benefit of the other the Secured Parties, a continuing security interest in and to, and a pledge of, all of the Mortgagor Article 9 Collateral (defined below) and all of Mortgagor's right, title and interest therein, whether now owned or existing or hereafter acquired or arising and wherever located, together with all Proceeds thereof to secure the Secured Obligations.

(b) As used in this Article II, the following terms shall have the following meanings:

(i) "Accounts" means any and all right, title and interest of the Mortgagor to payment for goods and services sold or leased, including any such right evidenced by chattel paper (as defined in the Uniform Commercial Code), whether due or to become due, whether or not it has been earned by performance, and whether now or hereafter acquired or arising in the future, including accounts receivable.

(ii) "Accounts Receivable" means all Accounts and all right, title and interest in any returned goods, together with all rights, titles, securities and guarantees with respect thereto, including any rights to stoppage in transit, replevin, reclamation and resales, and all related security interests, liens and pledges, whether voluntary or involuntary, in each case whether now existing or owned or hereafter arising or acquired.

(iii) "Documents" means all instruments, files, records, ledger sheets and documents covering or relating to any of the Collateral.

(iv) “Equipment” means all equipment, furniture and furnishings, and all tangible personal property similar to any of the foregoing, including tools, parts and supplies of every kind and description, and all improvements, accessions or appurtenances thereto, that are now or hereafter owned by the Mortgagor.

(v) “General Intangibles” means all choses in action and causes of action and all other assignable intangible personal property of the Mortgagor of every kind and nature (other than Accounts Receivable) now owned or hereafter acquired by the Mortgagor, including corporate or other business records, indemnification claims, contract rights (including rights under leases, whether entered into as lessor or lessee, interest rate protection agreements, including, without limitation, any Derivative Contract and other agreements, excluding, however, the Franchise Agreement), payment intangibles, trademarks, service marks and other intellectual property, goodwill, registrations, franchises, tax refund claims and any letter of credit, guarantee, claim, security interest or other security held by or granted to the Mortgagor to secure payment by an Account Debtor (as defined in the Uniform Commercial Code) of any of the Accounts Receivable.

(vi) “Inventory” means all goods of the Mortgagor, whether now owned or hereafter acquired, held for sale or lease, or furnished or to be furnished by the Mortgagor under contracts of service, or consumed in the Mortgagor’s business, including raw materials, intermediates, work in process, packaging materials, finished goods, semi-finished inventory, scrap inventory, manufacturing supplies and spare parts, and all such goods that have been returned to or repossessed by or on behalf of the Mortgagor.

(vii) “The Mortgagor’s Article 9 Collateral” means all (a) Accounts, including, without limitation, each and every Account Receivable; (b) Inventory; (c) Equipment; (d) Documents; (e) General Intangibles; (f) each of the following, as defined in the Uniform Commercial Code, goods, investment property, instruments, chattel paper, fixtures, as-extracted collateral, commercial tort claims, letter of credit rights, payment intangibles, promissory notes, supporting obligations; (g) cash, cash accounts and other deposit accounts (as defined in the Uniform Commercial Code) together with all monies, securities and instruments at any time deposited in any such account or otherwise held for the credit thereof; (h) securities accounts (as defined in the Uniform Commercial Code), together with all financial assets (as defined in the Uniform Commercial Code) credited therein from time to time, and all financial assets (as defined in the Uniform Commercial Code), monies, securities, cash and other property held therein or credited thereto; (i) other items, kinds and types of personal property, tangible or intangible, of whatever nature, and regardless of whether the creation or perfection or effect of perfection or non-perfection of a security interest therein is governed by the Uniform Commercial Code of any particular jurisdiction or by any other applicable treaty, convention, statute, law or regulation of any applicable jurisdiction; (j) additions, modifications, alterations, improvements,

upgrades, accessions, components, parts, appurtenances, substitutions and/or replacements of, to or for any of the foregoing; and (k) Proceeds and products (as defined in the Uniform Commercial Code) of any and all of the foregoing.

(viii) “Proceeds” means all “proceeds” (as defined in the Uniform Commercial Code) of any and all of the Collateral, including, without limitation, all proceeds in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral by any governmental body, authority, bureau or agency (or any Person acting under color of governmental authority) and, to the extent not otherwise included, all payments under insurance (whether or not Mortgagee is the loss payee thereof), or any indemnity, warranty or guaranty, payable by reason of loss or damage to or otherwise with respect to any of the Collateral.

(ix) “Uniform Commercial Code” has the meaning specified in the Loan Agreement.

2.3 Perfection; Further Actions.

(a) The Mortgagee is hereby authorized to file (to the extent permitted by applicable law, without the signature of the applicable Mortgagor), and the Mortgagor shall execute, deliver and cause to be filed, such financing statements as Mortgagee deems necessary or appropriate under applicable law, and otherwise take such other action and execute such assignments or other instruments or documents, in each case as Mortgagee may reasonably request, to evidence, perfect, or record Mortgagee’s security interest in the Collateral or to enable Mortgagee to exercise and enforce its rights and remedies with respect to any Collateral. The Mortgagor hereby authorizes Mortgagee to execute and file any such financing statement or continuation statement on such Mortgagor’s behalf. The parties acknowledge that a carbon, photographic, or other reproduction of this Security Agreement shall be sufficient as a financing statement to the extent permitted by law.

(b) The Mortgagor will, at its own expense, make, execute, endorse, acknowledge, file and/or deliver to Mortgagee from time to time such descriptions and designations of its Collateral, documents of title, vouchers, invoices, schedules, confirmatory assignments, conveyances, financing statements, transfer endorsements, powers of attorney, certificates, reports and other assurances or instruments and take such further steps relating to the Collateral and other property or rights covered by the security interest hereby granted, which Mortgagee reasonably deems appropriate or advisable to perfect, preserve or protect its security interest in the Collateral.

(c) For each deposit account that the Mortgagor at any time opens or maintains, the Mortgagor shall, at the time such deposit account is opened, cause the depository bank to agree to comply with reasonable instructions from Mortgagee to such depository bank directing the disposition of funds from time to time credited to such deposit account, without further consent of the Mortgagor or any other Person, pursuant to an agreement reasonably satisfactory in form and substance to Mortgagee. Mortgagee agrees with the Mortgagor that Mortgagee shall not give any such instructions or withhold any withdrawal rights from the

Mortgagor unless an Event of Default has occurred and is continuing, or, after giving effect to any withdrawal, would occur. The provisions of this paragraph shall not apply to any deposit account for which the Mortgagor, the depositary bank and Mortgagee have entered into an account control agreement specially negotiated among the Mortgagor, the depositary bank and Mortgagee for the specific purpose set forth therein.

2.4 Representations and Agreement as to Collateral. The Mortgagor represents that:

(a) Schedule 2.6(a) hereto sets forth, for the Mortgagor, (i) the location of its principal place of business, (ii) the location of its chief executive office, (iii) any location where its books and records are maintained, (iv) any other locations where any Collateral is located, (v) its type of organization, (vi) its jurisdiction of formation, (vii) any jurisdiction where its ownership, lease or operation of property or the conduct of its business requires qualification as a foreign entity, except where the failure to so qualify would not reasonably be expected to have a material adverse effect, (viii) its state organizational identification number (if any), and (ix) its U.S. federal tax identification number (if any).

(b) Except as disclosed on Schedule 2.6(b), none of the Collateral is in the possession of any bailee, warehouseman, processor or consignee. To the extent that any of the Mortgagor's Collateral is in the possession of any bailee, warehouseman, processor or consignee, Schedule 2.6(b) also contains a good faith estimate, as of the Effective Date, of the market value of the Collateral of the Mortgagor held by each such Person at such location. the Mortgagor shall not establish any new location for Collateral until (i) it shall have given to Mortgagee not less than 30 days' prior written notice of its intention so to do, clearly describing such new location and providing such other information in connection therewith as Mortgagee may reasonably request, and (ii) with respect to such new location, it shall have taken all action, satisfactory to Mortgagee, to maintain the security interest of Mortgagee in the Collateral intended to be granted hereby at all times fully perfected and in full force and effect.

(c) Except as disclosed on Schedule 2.6(f), the Mortgagor is not the holder of a commercial tort claim (as defined in the Uniform Commercial Code). If the Mortgagor shall at any time hold or acquire a commercial tort claim, the Mortgagor shall promptly notify Mortgagee thereof in a writing signed by the Mortgagor, which sets forth the details thereof and grants to Mortgagee a Lien thereon and on the Proceeds thereof, all upon the terms of this Mortgage, with such writing to be in form and substance reasonably satisfactory to Mortgagee; provided, however, that the Mortgagor shall be entitled to receive and retain the Proceeds from any such commercial tort claim, unless an Event of Default exists and then is continuing.

2.5 Other Changes Affecting Perfection. The Mortgagor shall not, without giving Mortgagee 15 days' prior written notice thereof and taking such steps, satisfactory to Mortgagee in its sole discretion, as may be necessary or appropriate to maintain the perfection and full force and effect of the Lien in the Collateral: (a) merge or consolidate with any other corporation, limited liability company, partnership or other entity or otherwise change the state under the laws of which it is organized, (b) change the location of its chief executive office, (c) change the location from which it maintains its books of account, documents and other records in respect of its Collateral and contract rights, (d) add any new places of business or close any of its existing

places of business, (e) make any change in the Mortgagor's name or adopt or operate under any trade name, assumed name or fictitious name or otherwise add any name under which the Mortgagor does business, or (f) make any change (other than as set forth in clauses (a) through (e) above) which would reasonably be expected to adversely affect the perfection or priority of Mortgagee's Lien in the Collateral.

2.6 Maintenance of Records and Equipment.

(a) the Mortgagor will keep and maintain at its own cost and expense satisfactory and complete records of its Collateral and contracts, including, but not limited to, complete and legible copies of all Material Agreements, records of all payments received, all credits granted thereon, and all other dealings therewith. The Mortgagor shall, at its own cost and expense, if requested by Mortgagee, deliver to Mortgagee copies of all documents evidencing its Collateral and Material Agreements and copies of such other documents relating to the Collateral as Mortgagee may reasonably request. If Mortgagee so directs after the occurrence and during the continuance of an Event of Default, the Mortgagor shall legend, in form and manner reasonably satisfactory to Mortgagee, the Collateral and Material Agreements, as well as books, records and documents of the Mortgagor evidencing or pertaining to the Collateral with an appropriate reference to the fact that the Collateral and Material Agreements have been assigned to Mortgagee and that Mortgagee has a security interest therein; provided, however, that The Mortgagor shall not be required to legend the Franchise Agreement.

(b) The Mortgagor shall keep and maintain each item of Collateral in good operating condition, ordinary wear and tear excepted.

2.7 Protection of Collateral; Reimbursement. All insurance expenses and all expenses of protecting, storing, warehousing, insuring, handling, maintaining, and shipping any Collateral, any and all excise, property, sales, use, or other taxes imposed by any state, federal, or local authority on any of the Collateral, or in respect of the sale thereof, or otherwise in respect of the Mortgagor's business operations which, if unpaid, could result in the imposition of any Lien upon the Collateral, shall be borne and paid by the Mortgagor. If Mortgagor fails to pay any portion thereof when due, except as may otherwise be permitted under this Mortgage or under any of the other Loan Documents, Mortgagee, at its option, may, but shall not be required to, pay the same. All sums so paid or incurred by Mortgagee for any of the foregoing and any and all other sums for which the Mortgagor may become liable under this Mortgage and all costs and expenses (including reasonable attorneys' fees and reasonable paralegals' fees, legal expenses, and court costs, expenses and other charges related thereto) which Mortgagee actually incurs in enforcing or protecting its Liens on or rights and interests in the Collateral or any of its rights or remedies under this Mortgage or any other agreement between the parties to this Mortgage or in respect of any of the transactions to be had under this Mortgage shall be repayable on demand and, until paid by the Mortgagor to Mortgagee with interest thereon at a rate per annum equal to the applicable rate set forth in the Note, shall be additional Secured Obligations under this Mortgage secured by the Collateral. Unless otherwise provided by law, Mortgagee shall not be liable or responsible in any way for the safekeeping of any of the Collateral or for any loss or damage thereto or for any diminution in the value thereof, or for any act or default of any warehouseman, carrier, forwarding agency, or other Person whomsoever.

2.8 General Appointment as Attorney-in-Fact. In addition to any other provisions of this Mortgage, upon the occurrence and during the continuation of an Event of Default, the Mortgagor hereby irrevocably constitutes and appoints Mortgagee and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the Mortgagor and in the name of the Mortgagor or in its own name, from time to time following the occurrence and during the continuance of an Event of Default, in Mortgagee's discretion, for the purpose of carrying out the terms of this Mortgage, without notice (except as specifically provided herein) to or assent by the Mortgagor, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Mortgage, including, without limiting the generality of the foregoing, the power and right, on behalf of the Mortgagor, to do the following, upon notice to the Mortgagor: (a) to pay or discharge taxes, liens, security interests or other encumbrances levied or placed on or threatened against the Collateral, to effect any repairs or any insurance, called for by the terms of this Mortgage and to pay all or any part of the premiums therefor and the costs thereof, and otherwise to itself perform or comply with, or otherwise cause performance or compliance with, any of the covenants or other agreements of the Mortgagor contained in this Mortgage which the Mortgagor has failed to perform or with which the Mortgagor has not complied; (b) to commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any part thereof and to enforce any other right in respect of any Collateral; (c) to defend any suit, action or proceeding brought against the Mortgagor with respect to any Collateral; (d) to settle, compromise or adjust any suit, action or proceeding described above and, in connection therewith, to give such discharges or releases as Mortgagee may deem appropriate; and (e) to generally sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as through Mortgagee were the absolute owner thereof for all purposes; and to do, at Mortgagee's option and the Mortgagor's expense, at any time, or from time to time, all acts and things which Mortgagee deems necessary to protect, preserve or realize upon the Collateral and Mortgagee's security interest therein, in order to effect the intent of this Mortgage, all as fully and effectively as the Mortgagor might do. The Mortgagor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable.

2.9 Mortgagee, Secured Creditors Not Liable; Waivers.

(a) The powers conferred on Mortgagee hereunder are solely to protect its interests in the Collateral and shall not impose any duty upon it to exercise any such powers. Mortgagee shall be accountable only for amounts that it actually receives as a result of the exercise of such powers, and neither it nor any of their respective officers, directors, employees or agents shall be responsible to the Mortgagor for any act or failure to act, except for its own gross negligence or willful misconduct, as determined in a final judgment by a court of competent jurisdiction.

2.10 Authority to Execute Transfers. Without limitation of any authorization granted to Mortgagee hereunder, the Mortgagor also hereby authorizes Mortgagee, upon the occurrence and during the continuance of an Event of Default, to execute, in connection with the exercise by Mortgagee of its remedies hereunder, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral.

2.11 Performance by Mortgagee of Mortgagor's Obligations. If the Mortgagor fails to perform or comply with any of its agreements contained herein and Mortgagee shall itself perform or comply, or otherwise cause performance or compliance, with such agreement, the reasonable expenses of Mortgagee actually incurred in connection with such performance or compliance, together with interest thereon at the applicable rate set forth in the Note, shall be payable by the Mortgagor to Mortgagee on demand and shall constitute Secured Obligations secured hereby. Notwithstanding anything to the contrary contained herein, Mortgagee will notify the Mortgagor as soon as it is practicable of any action taken by it of the nature referred to herein.

2.12 Reinstatement. The provisions of this Mortgage shall remain in full force and effect and continue to be effective should any petition be filed by or against the Mortgagor for liquidation or reorganization, should the Mortgagor become insolvent or make an assignment for the benefit of creditors or should a receiver or trustee be appointed for all or any significant part of the Mortgagor's assets or should any other financial impairment occur, and shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Secured Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Secured Obligations, whether as a "voidable preference", "fraudulent conveyance", or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Secured Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

2.13 Certain Remedies. In addition to the rights and remedies set forth in Section 2.25, below, upon the occurrence and during the continuance of an Event of Default, Mortgagee shall have the right, in the Mortgagor's or Mortgagee's name to: (i) notify Account Debtors and other persons indebted to the Mortgagor of Mortgagee's interest in any such amounts payable to the Mortgagor, to instruct such Account Debtors and other Persons to remit such amounts directly to Mortgagee, and, upon collection of the same and apply same to the Secured Obligations, (ii) demand payment of the Collateral, (iii) enforce payment of the Collateral, by legal proceedings or otherwise, (iv) exercise all of the Mortgagor's rights and remedies with respect to the collection of the Collateral, (v) settle, adjust, compromise, extend, or renew the Collateral, (vi) settle, adjust, or compromise any legal proceedings brought to collect the Collateral, (vii) if permitted by applicable law, sell or assign the Collateral upon such terms, for such amounts, and at such time or times as Mortgagee deems advisable, (viii) discharge and release the Collateral, (ix) take control, in any manner, of any item of payment or Proceeds relating to any Collateral, (x) prepare, file, and sign the Mortgagor's name on a proof of claim in bankruptcy or similar document against any account debtor, and (xi) endorse the name of the Mortgagor upon any of the items of payment or Proceeds relating to any Collateral and deposit the same to the account of Mortgagee on account of the Secured Obligations. Without limiting the generality of the foregoing, Mortgagee shall have the right, in the Mortgagor's or Mortgagee's name to:

(a) instruct the obligor or obligors on any agreement, instrument or other obligation constituting the Collateral to make any payment required by the terms of such instrument or agreement directly to Mortgagee; and

(b) withdraw any or all monies, securities and/or instruments in any deposit account for application to the Secured Obligations.

2.14 Agent. Mortgagee will hold in accordance with this Mortgage all items of the Collateral at any time received under this Mortgage. The acceptance by Mortgagee of this Mortgage, with all the rights, powers, privileges and authority so created, shall not at any time or in any event obligate Mortgagee to appear in or defend any action or proceeding relating to the Collateral to which it is not a party, or to take any action hereunder or thereunder, or to expend any money or incur any expenses or perform or discharge any obligation, duty or liability under the Collateral.

ARTICLE III

EVENTS OF DEFAULT

3.1 Events of Default. The occurrence or existence of any one or more of the following events or conditions shall be an “Event of Default” under this Mortgage:

(a) failure by the Mortgagor to pay any amount due under this Mortgage (other than any amount due under any Loan, any Note or any other Loan Document, other than this Mortgage) on its due date and the continuation of such failure for a period of three (3) Business Days;

(b) if there shall be a default by the Mortgagor in the due observance or performance of any other non-monetary provision of this Mortgage and such default shall continue for a period of thirty (30) days after the earlier of (i) written notice thereof shall have been given to the Mortgagor by Mortgagee and (ii) the Mortgagor’s knowledge of such default;

(c) [Reserved]; or

(d) the occurrence or existence of any other Default under and pursuant to the Loan Agreement.

ARTICLE IV

REMEDIES

4.1 Rights of Mortgagee after Default. Upon the occurrence of an Event of Default and so long as such Event of Default exists, Mortgagee shall:

(a) have the option to declare the Note and all other Secured Obligations due and payable, and further may proceed immediately to foreclose this Mortgage and exercise Mortgagee’s rights under this Mortgage the other Loan Documents or any other controlling document;

(b) have all the rights and remedies of a secured party under the Uniform Commercial Code of those states governing disposition of the Collateral in the Event of a

Default, including, but not limited to, the right to sell the Collateral at public or private sale, and the right to be a purchaser at any such sale;

(c) demand, elect and receive all the rents and profits as then or may thereafter be due and owing to the Mortgagor in connection with the Mortgaged Premises and the Collateral, giving notice of its intention to collect and receive such rents to such tenants, occupiers or lessees of the Mortgaged Premises, and applying the same upon the amount due upon the Note and the other Secured Obligations; and in such event, the Mortgagor shall be deemed to have assigned and transferred such rents and profits to Mortgagee as additional security for the performance of the covenants of this Mortgage until all indebtedness secured hereby has been fully paid and satisfied;

(d) have all other remedies available at law or in equity; and

(e) have the right:

(i) to enter upon and take possession of the Mortgaged Premises and the Collateral and to operate same for and on behalf of the Mortgagor;

(ii) to collect all of the rent, income, profits or revenues generated therefrom; and

(iii) to expend such sums of money which it may deem necessary for the maintenance, preservation and operation of the Mortgaged Premises, including expenditures for improvements, alterations and repairs, including those of a capital nature.

Any sums so expended by Mortgagee shall at once become additional indebtedness owing from the Mortgagor to Mortgagee and shall be immediately due and payable by the Mortgagor, with interest thereon to the extent legally enforceable at the rate applicable to the principal balance of the Note, which sum so advanced shall be added to and become a part of the Secured Obligations.

4.2 Distribution of Sums Received by Mortgagee. Upon enforcement of this Mortgage upon the occurrence of an Event of Default, all sums received from time to time by Mortgagee shall be applied to the reduction of the Secured Obligations in such order as Mortgagee may determine in its sole discretion.

4.3 Rights Cumulative. All rights and remedies from time to time conferred upon or reserved to Mortgagee are cumulative and in addition to, not in limitation of, any rights and remedies which Mortgagee may have by law or at equity, and none is intended to be exclusive of any other. No delay or omission in insisting upon the strict observance or performance of any provision of this Mortgage, or to exercise any right or remedy, shall be construed as a waiver or relinquishment of such provision, nor shall it impair such right or remedy. Every right and remedy may be exercised from time to time and as often as deemed expedient.

4.4 Appointment of Receiver. If an Event of Default as described in Section 3.1 hereof shall occur, then with or without the filing of a bill in equity or other commencement of judicial proceedings to enforce the rights of Mortgagee, Mortgagee, to the extent permitted

by law, and without prior notice to the Mortgagor, shall be entitled as a matter of right to the appointment of a receiver or receivers of the Mortgaged Premises and the Collateral, pending such proceedings, with such powers as are conferred upon Mortgagee herein and as shall be conferred by the court making such appointment; but notwithstanding the appointment of any receiver, trustee, or other custodian, Mortgagee shall be entitled to the possession and control of any cash, or other instruments at the time held by, or payable or deliverable under the terms of this Mortgage to Mortgagee.

4.5 Suits to Protect the Mortgaged Premises and the Collateral. Mortgagee shall have the power:

(a) To institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Mortgaged Premises by any acts which may be unlawful or a violation of the Mortgage; and

(b) To preserve or protect its interest in the Mortgaged Premises and in the income, revenues, rents and profits arising therefrom.

4.6 Mortgagee's Power of Enforcement. If an Event of Default shall have occurred, Mortgagee may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or by any other appropriate proceeding or remedy (a) to foreclose this Mortgage and to sell, as an entirety or in separate lots, units or parcels, the Mortgaged Premises and the Collateral, under the judgment or decree of a court or courts of competent jurisdiction; and (b) to pursue any other remedy available to it, all as Mortgagee shall deem most effectual for such purposes. Mortgagee shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, as Mortgagee may determine.

4.7 Application of Indebtedness Towards Purchase Price. Upon any foreclosure sale, pursuant to judicial proceedings, Mortgagee may bid for and purchase the Mortgaged Premises and Collateral, and upon compliance with the terms of sale, may hold, retain, possess and dispose of such property at its own absolute right without farther accountability. Any such purchase shall permit Mortgagee to apply to the purchase price any portion of or all sums due to the Secured Parties under the Note and the other Secured Obligations in lieu of cash, to the amount which shall, upon distribution of the net proceeds of such sale, be payable thereon.

4.8 No Waiver of One Default to Affect Another, Etc. No waiver of any default hereunder shall extend to or shall affect any subsequent or other then existing default or shall impair any rights, powers or remedies consequent thereon.

If Mortgagee (a) grants forbearance or any extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof, (c) waives or does not exercise any right granted herein or in the Note or any other Loan Document; (d) releases any part of the Mortgaged Premises from the lien of this Mortgage or otherwise changes any of the terms of the Note or this Mortgage or any of the other Loan Documents; (e) consents to the filing of any map, plat or replat thereof; (f) consents to the granting of any easement thereon; or

(g) makes or consents to any agreement subordinating to the lien or charge hereof (items (a) through (g) of this paragraph collectively are referred to as a “Loan Modification”), then and in each such case such act or omission shall not release, discharge, modify, change, or affect the original liability under the Note, this Mortgage, the other Loan Documents or otherwise of the Mortgagor or any subsequent purchaser of the Mortgaged Premises or any part thereof, or any maker, co-signer, endorser, surety or guarantor, except as expressly set forth in such Loan Modification; nor shall any such act or omission preclude Mortgagee from exercising any right, power or privilege herein granted or intended to be granted in the event of any other default then made or of any subsequent default, nor, except as otherwise expressly provided in any Loan Modification executed by Mortgagee shall the lien of this Mortgage be altered thereby.

ARTICLE V

MISCELLANEOUS PROVISIONS

5.1 Successors and Assigns Included in Parties. Whenever in this Mortgage one of the parties hereto is named or referred to, the successors and assigns of such party shall be included, and all covenants and agreements contained in this Mortgage by or on behalf of the Mortgagor or either of them or by or on behalf of Mortgagee shall include their respective successors and assigns, whether so expressed or not. Notwithstanding anything expressed or implied herein to the contrary, this Mortgage is being made in favor of Mortgagee for itself and as agent for the Secured Parties. All references to “Mortgagee” herein shall be construed to mean Mortgagee for itself and as agent for the Secured Parties. All rights of Mortgagee in, to and under this Mortgage shall pass to, and may be exercised by, any successor agent.

5.2 Invalid Provisions to Affect No Others. In case any one or more of the covenants, agreements, terms or provisions contained in this Mortgage or in the Note or in the other Loan Documents shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein and in the Note and in the other Loan Documents shall be in no way affected, prejudiced or disturbed thereby.

5.3 Notices. Any notice required or permitted to Mortgagee or the Mortgagor hereunder shall be deemed effective (a) three (3) days after being mailed by certified United States mail, postage prepaid with return receipt requested or (b) upon the following Business Day after being sent by an overnight carrier which provides for a return receipt, to the applicable addresses specified below:

If to the Mortgagor:	[•]Old Town Lodging, LLC c/o RockBridge Capital, LLC 4100 Regent Street, Suite G Columbus, Ohio 43210 Attention: James T. Merkel
-------------------------	--

With a copy to:

RockBridge Capital, LLC
c/o RockBridge Capital, LLC
4100 Regent Street, Suite G
Columbus, Ohio 43210
Attention: Legal Department

If to Mortgagee: Wells Fargo Bank, National Association
Winston-Salem Loan Center
One West Fourth Street, 3rd Floor
Winston-Salem, North Carolina 27101
Attention: Manager (AU 64277; Loan Number 1005073)

With a copy to:

Wells Fargo Bank, National Association
Hospitality Finance Group (AU# 64277)
2030 Main Street, Suite 500
Irvine, California 92614
Attention: Sherrie Courtney-Sanders, Vice President

or at such other addresses as may be specified by the Mortgagor or Mortgagee by notice hereunder. Any notice required to be given by Mortgagee of a sale, lease or other disposition of the collateral or any other intended action by Mortgagee, deposited in the United States mail, postage prepaid, duly addressed as specified above no less than ten (10) days prior to such proposed action or if sent by overnight carrier no less than five (5) days prior to such proposed action, shall constitute commercially reasonable and fair notice to the Mortgagor of same.

5.4 Maximum Principal Amount. This Mortgage shall secure the payment of any additional amounts advanced, from time to time, together with any interest thereon, by Mortgagee to the Mortgagor under the Note or other Loan Documents stating that such advances are secured hereby. The maximum amount of unpaid loan indebtedness secured hereby shall be Fifteen Million and no/100 Dollars (\$15,000,000.00), exclusive of interest thereon, unpaid balances of advances made with respect to the Mortgaged Premises for the payment of taxes, assessments, insurance premiums, costs incurred for the protection of the Mortgaged Premises and other costs which Mortgagee is authorized by this Mortgage or any other Loan Document to pay on the Mortgagor's behalf, all of which shall be secured by this Mortgage. Such maximum principal amount is stated herein for the purpose of any applicable future advance laws and is not deemed a commitment by Mortgagee to make any future advances.

5.5 WAIVER OF JURY TRIAL: THE MORTGAGOR AND MORTGAGEE HEREBY JOINTLY AND SEVERALLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING RELATING TO THIS

INSTRUMENT AND TO ANY OF THE LOAN DOCUMENTS, THE OBLIGATIONS HEREUNDER OR THEREUNDER, ANY COLLATERAL SECURING THE OBLIGATIONS, OR ANY TRANSACTION ARISING THEREFROM OR CONNECTED THERETO. THE MORTGAGOR AND MORTGAGEE EACH REPRESENT TO THE OTHER THAT THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY GIVEN.

5.6 Partial Release and Additional Security. Any part of the Mortgaged Premises and the Collateral covered by this Mortgage may be released by Mortgagee without affecting the lien and security interest hereby granted as to the remainder, and the security of this Mortgage shall not affect or be affected by any other security for the indebtedness secured hereby nor shall the taking of additional security release or impair the security hereof or liability for the indebtedness secured hereby in any manner whatsoever. Notwithstanding anything contained herein to the contrary, by acceptance of this Mortgage, Mortgagee agrees in the event that by reason of the Mortgagor entering into this Mortgage (i) either the Mortgagor becomes subject to a penalty in excess of Five Thousand and 00/00 Dollars (\$5,000.00) pursuant to the terms of any agreement or regulation evidencing or governing any individual item of Collateral, or (ii) any third party to any agreement evidencing or governing any individual item of the Collateral asserts in writing that (A) such Mortgagor is in default under such agreement evidencing or governing any such individual item of Collateral or (B) such Mortgagor's interest in such individual item of Collateral is subject to forfeiture, then upon the written request of such Mortgagor, Mortgagee shall partially release such individual item of Collateral from the coverage of this Mortgage, but only so long as Mortgagee determines, in its reasonable discretion, that the release of such individual item of Collateral shall not materially affect the value of Mortgagee's collateral for the Secured Obligations.

5.7 Waiver of Certain Rights by the Mortgagor. The Mortgagor hereby waives any right or claim of right to cause a marshalling of the Mortgagor's assets or to cause Mortgagee to proceed against any of the security for the Secured Obligations before proceeding under this Mortgage against the Mortgagor, and the Mortgagor hereby agrees that any court having jurisdiction to foreclose the lien of this Mortgage may order the Mortgaged Premises sold as an entirety. The Mortgagor hereby waives the benefit of all laws now or hereafter existing providing for (i) any appraisal before sale of any portion of the Mortgaged Premises and (ii) the extension of time for the enforcement of the collection of the Note or the debt evidenced thereby or creating or extending a period of redemption from any sale made in collecting said debt. To the full extent the Mortgagor may do so, the Mortgagor agrees that the Mortgagor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, extension or redemption, and the Mortgagor, for the Mortgagor and the Mortgagor's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the Mortgaged Premises, to the extent permitted by law, hereby waives and releases all rights of redemption, valuation, appraisal, stay of execution and notice of election to mature or declare due the whole of the secured indebtedness in the event of foreclosure of this Mortgage. The Mortgagor expressly waives and relinquishes all rights and remedies (including any rights of subrogation) accorded by applicable law to indemnitors or guarantors.

5.8 No Additional Debt. The Mortgagor will not incur any indebtedness in connection with the Mortgaged Premises, other than indebtedness expressly permitted pursuant to the Loan Agreement.

5.9 [Reserved]

5.10 No Merger. The fact that the subleases for any portion of the Mortgaged Premises or the leasehold estates thereby created might be held directly or indirectly by or for the benefit of any person or entity which might have an interest in any other estate in the Mortgaged Premises will not, by operation of law or otherwise, merge any of the leases or the leasehold estates thereby created with any other estate in the Mortgaged Premises so long as the indebtedness hereby secured remains unpaid, unless Mortgagee consents in writing to such merger. In such event, Mortgagee shall continue to have and enjoy all of the rights and privileges of a Mortgagee as to the separate estates. In addition, upon the foreclosure of the lien created by this Mortgage on the Mortgaged Premises, any leases or subleases then existing and created by Mortgagor shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Mortgagee or any purchaser at any such foreclosure sale shall so elect. No act by or on behalf of Mortgagee or any such purchaser shall constitute a termination of any lease or sublease unless Mortgagee or such purchaser shall give written notice thereof to such tenant or subtenant.

5.11 Flood Insurance. The Mortgagor hereby certifies and represents that the Mortgaged Premises are not in a flood hazard area as defined under the Flood Disaster Protection Act of 1973 ("FDPA") or the National Flood Insurance Act of 1968 ("NFIA"). However, in the event that the Mortgaged Premises are later determined to be in a flood hazard area, the Mortgagor agrees to obtain and maintain adequate flood insurance in an amount and with such coverages as may be required by Mortgagee and to comply with any other requirement of the FDPA, NFIA or any other applicable federal, state or local statute, regulation or ordinance concerning flood hazard areas.

5.12 Submission to Jurisdiction. The Mortgagor irrevocably agrees that any suit, action or other legal proceeding arising directly, indirectly or otherwise in connection with, out of, related to or from the Loan, the Note, this Mortgage or any of the other Loan Documents may be brought in a court located within the State of Kansas where the real estate encumbered by this Mortgage is located. Furthermore, the Mortgagor irrevocably (i) consents and submits to the jurisdiction of any local, state or federal court located within the State of Kansas, (ii) waives any objection which the Mortgagor may have to the laying of venue in any suit, action or proceeding in any such courts, and (iii) waives any claims that any such suit, action or proceeding has been brought in an inconvenient forum. Notwithstanding anything contained in this paragraph to the contrary, Mortgagee shall have the right to commence and litigate any suit, action or proceeding against the Mortgagor or any property of the Mortgagor in any court of any other appropriate jurisdiction. Nothing herein shall be deemed to limit any rights, powers or privileges which Mortgagee or any other Mortgagee may have pursuant to any law of the United States of America or any rule, regulation or order of any department or agency thereof and nothing herein shall be deemed to make unlawful any transaction or conduct by Mortgagee or such Mortgagee which is lawful pursuant to, or which is permitted by, any of the foregoing.

5.13 Governing Law. This Mortgage shall be governed by and construed in accordance with the Laws of the State of Kansas and the respective rights and obligations of the Mortgagor and Mortgagee shall be governed by, and construed in accordance with, the law of the State of Kansas; provided that the Uniform Commercial Code shall govern the attachment and perfection of the security interests created hereby.

5.14 Captions. The captions or headings herein have been inserted solely for the convenience of reference and in no way define or limit the scope, intent or substance of any provision of this Mortgage. Whenever the context requires or permits the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable.

5.15 NO PERSONAL LIABILITY OF THE CITY. THE CITY EXECUTED THIS MORTGAGE SOLELY FOR THE PURPOSE OF CONFIRMING THAT ITS FEE INTEREST IN THE MORTGAGED PREMISES AND THE COLLATERAL ARE SUBJECT TO THE LIEN AND SECURITY INTEREST HEREOF; AND MORTGAGEE'S SOLE RECOURSE AGAINST THE CITY IN RESPECT OF ANY REPRESENTATION, WARRANTY, COVENANT OR AGREEMENT OF THE CITY IN THIS MORTGAGE SHALL BE LIMITED TO THE CITY'S FEE INTEREST IN THE MORTGAGED PREMISES AND THE COLLATERAL.

IN WITNESS WHEREOF, the Mortgagor has caused this Mortgage to be executed and delivered effective as of the day and year first above written.

MORTGAGOR:

Old Town Lodging, LLC

By: [•, as sole member]

Name:

Title:

Mortgagee Consent and Agreement

Mortgagee hereby accepts, consents and agrees to the foregoing Mortgage and its amendment and restatement of the Existing Fee Mortgage as of the day and year first above written.

MORTGAGEE:

Wells Fargo Bank, National Association

By:_____

Name: Jennifer A. Dakin

Title: Senior Vice President

STATE OF _____)
) SS.
COUNTY OF _____)

I, _____, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that [•], the [•] of [•], a [•] [limited liability company], which is the Manager of OLD TOWN LODGING, LLC, a Kansas limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such [•], appeared before me this day in person and acknowledged that he signed and delivered said instrument as such officer of said corporation, as his own free and voluntary act and as the free and voluntary act of [•], a [•] [limited liability company], and as the free and voluntary act of OLD TOWN LODGING, LLC, a Kansas limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this ____ day of September, 2011.

Notary Public

My Commission Expires:

STATE OF _____)

_____) SS.
COUNTY OF _____)

I, _____, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Jennifer A Dakin, Senior Vice President of WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association, as Administrative Agent, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Senior Vice President, appeared before me this day in person and acknowledged that he signed and delivered said instrument as such officer of said national association, as his own free and voluntary act and as the free and voluntary act of U.S. BANK NATIONAL ASSOCIATION, a national banking association for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this ____ day of September, 2011.

Notary Public

My Commission Expires:

ACKNOWLEDGEMENT, CONSENT AND CONFIRMATION OF CITY

The City of Wichita, Kansas, a Kansas municipal corporation (the “**City**”), hereby acknowledges and consents to the execution, delivery and recordation, of the foregoing Open-End Mortgage of Real Property, Security Agreement of Personal Property and Fixture Filing – Amendment and Restatement (the “**Mortgage**”) attached hereto, and to the transactions contemplated in the Mortgage, and confirms that its title to the Fee Parcel and interest in the Bond Lease remains subject to the lien of the Existing Fee Mortgage, as the same is amended and restated by the terms and conditions of this Mortgage. In connection therewith the City hereby represents and agrees, with and for the benefit of the Mortgagor, Mortgagee and their respective successors and assigns, as follows:

1. The City is a municipal corporation existing under the laws of the State of Kansas.
2. The execution and delivery of this Acknowledgement, Consent and Confirmation has been approved by all necessary action of the City, and the City’s officer executing this Acknowledgement, Consent and Confirmation on its behalf has full authority to do so and to bind the City hereto.
3. The City is the fee simple owner of the Fee Parcel.
4. The City hereby (i) confirms its predecessor’s grant, bargain, sale, mortgage and warrant, encumbrance, release, conveyance, assignment, transfer, hypothecation, pledge and setting over of the Existing Fee Mortgage as the same is amended and restated by the terms and conditions of this Mortgage and (ii) without interrupting or otherwise impairing or affecting the lien and priority of the Existing Fee Mortgage, hereby acknowledges that the same continues in force and effect for the benefit of Mortgagee and the Secured Parties on all of the property _____ that was conveyed to the City subject to the Existing Fee Mortgage.
5. The City expressly waives any right of redemption, including without limitation that provided by K.S.A. 60-2414(a).
6. Any notice required or permitted to the City as provided in Section 5.3 of the Mortgage, may be addressed as specified below:

City Clerk of the City of Wichita, Kansas
455 N. Main Street – 13th Floor
Wichita, Kansas 67202

IN WITNESS WHEREOF, the City has executed this ACKNOWLEDGEMENT,
CONSENT AND CONFIRMATION as of the date of the Mortgage.

THE CITY OF WICHITA, KANSAS

By: _____
Name: Carl Brewer
Title: Mayor

Attest:

Karen Sublett, City Clerk

STATE OF KANSAS)
) SS.
 COUNTY OF SEDGEWICK)

I, _____, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Carl Brewer, the Mayor of the CITY OF WICHITA, KANSAS, a municipal corporation existing under the laws of the State of Kansas, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Mayor, appeared before me this day in person and acknowledged that he signed and delivered said instrument as such officer of said corporation, as his own free and voluntary act and as the free and voluntary act of the CITY OF WICHITA, KANSAS, a municipal corporation existing under the laws of the State of Kansas, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this ____ day of October, 2011.

 Notary Public

My Commission Expires:

STATE OF KANSAS)
) SS.
 COUNTY OF SEDGEWICK)3

I, _____, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Karen Sublett, the City Clerk of the CITY OF WICHITA, KANSAS, a municipal corporation existing under the laws of the State of Kansas, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such City Clerk, appeared before me this day in person and acknowledged that she signed and delivered said instrument as such officer of said corporation, as her own free and voluntary act and as the free and voluntary act of the CITY OF WICHITA, KANSAS, a municipal corporation existing under the laws of the State of Kansas, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this ____ day of October, 2011.

 Notary Public

My Commission Expires:

APPROVED AS TO FORM:

 Gary E. Rebenstorf, City Attorney

ACKNOWLEDGEMENT, CONSENT AND CONFIRMATION OF TRUSTEE

I, the undersigned, _____, a duly authorized, qualified and acting _____ of UMB Bank, N.A., Kansas City, Missouri, as Trustee pursuant to the Trust Indenture dated December 1, 2006 entered into in connection with the issuance, by the City of Wichita, Kansas (the “City”), of Taxable Industrial Revenue Bonds, Series VI-A, 2006 (Old Town Lodging, LLC Project) and Taxable Industrial Revenue Bonds, Series VI-B, 2006 (Old Town Lodging, LLC Project) and as holder, by way of assignment from the City, of the lessor’s interest in the Lease dated December 1, 2006 (the “Lease”) by and between City of Wichita, Kansas (as original lessor) and Old Town Lodging, LLC (as lessee), hereby acknowledge and consent to the execution, delivery and recordation, of the Open-End Mortgage of Real Property, Security Agreement of Personal Property and Fixture Filing – Amendment and Restatement (the “Mortgage”) attached hereto and, hereby confirm and agree that it is the intent of the undersigned as holder of the lessor’s interest in the Lease, that the priority of the Lease shall continue to be subordinate to the lien of the Mortgage after such execution, delivery and recordation.

UMB Bank, N.A., Kansas City, Missouri, Trustee:

By: _____
 Name:
 Title:

Exhibit A
Description of Fee Parcel

CLEVELAND/1237300.6
09/22/11

(PUBLISHED IN THE WICHITA EAGLE ON OCTOBER 21, 2011)

ORDINANCE NO. 49-106

AN ORDINANCE OF THE CITY OF WICHITA, KANSAS, AUTHORIZING THE EXECUTION OF A FIRST AMENDMENT TO LEASE AND AN ORIGINATION FEE AGREEMENT BY AND BETWEEN THE CITY OF WICHITA, KANSAS AND OLD TOWN LODGING, LLC, AND APPROVING THE FORM OF, AND CONSENTING TO, A RESTATED MORTGAGE AND A RESTATED AND AMENDED ASSIGNMENT OF LEASES AND RENTS, ALL IN CONNECTION WITH THE PROJECT FINANCED BY THE CITY'S INDUSTRIAL REVENUE BONDS, SERIES VI, 2006.

WHEREAS, the Governing Body of the City of Wichita, Kansas heretofore passed Ordinance No. 47-317 of the City of Wichita, Kansas (the "Issuer"), authorizing the issuance of its Industrial Revenue Bonds, Series VI-A, 2006 and Series VI-B, 2006 (Old Town Lodging, LLC), and the execution of a certain Lease Agreement, dated as of December 1, 2006 (the "Lease"), in connection therewith; and,

WHEREAS, the Governing Body of the City of Wichita, Kansas now wishes to authorize certain amendments to the Lease, to evidence its approval of a second five-year term of ad valorem tax abatement, and to prospectively remove a requirement for a \$45,000 annual payment in lieu of taxes; and,

WHEREAS, in connection with a refinancing of the construction and permanent bank loans on the Project by Wells Fargo Bank, National Association, the City has been asked to approve certain additional amendments to the Lease, relating to allowance of mortgages, and to approve the form of, and consent to, a restated mortgage and a restated and amended assignment of leases and rents; and,

WHEREAS, the City and Old Town Lodging, LLC, desire to prospectively create, by and through an Industrial Revenue Bond Origination Fee Agreement, a requirement for an origination fee, payable in annual installments of \$45,000, in each of the years 2012 through 2016.

NOW THEREFORE BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS AS FOLLOWS:

Section 1. Authorization of Industrial Revenue Bond Origination Fee Agreement and First Amendment to Lease. The Issuer is hereby authorized to enter into the Industrial Revenue Bond Origination Fee Agreement and the First Amendment to Lease.

Section 2. Approval of and Consent to Restated Mortgage and Restated and Amended Assignment of Leases and Rents. The Governing Body of the City of Wichita, Kansas, hereby approves and consents to a certain Open-End Mortgage of Real Property, Security Agreement of Personal Property, Assignment of Rents and Profits and Fixture Filing – Amendment and Restatement (the "Restated Mortgage") by and between Old Town Lodging,

LLC and Wells Fargo Bank, National Association, and a certain Assignment of Leases and Rents -- Amendment and Restatement (the “Restated and Amended Assignment of Leases and Rents”) executed by Old Town Lodging, LLC, in favor of Wells Fargo Bank, National Association.

Section 3. Execution of Documents. The Mayor or Vice Mayor of the Issuer is hereby authorized and directed to execute, and staff are authorized to deliver, the Industrial Revenue Bond Origination Fee Agreement, the First Amendment to Lease and the City’s Acknowledgment, Consent and Confirmation to each of the Restated Mortgage and the Restated and Amended Assignment of Lease and Rents, for and on behalf of and as the act and deed of the Issuer in substantially the form approved on this date with such corrections or amendments thereto as the Mayor or Vice Mayor shall approve, which approval shall be evidenced by his or her execution thereof, and such other documents, certificates and instruments as may be necessary to carry out and comply with the intent of this Ordinance. The City Clerk or Deputy City Clerk of the Issuer is hereby authorized and directed to attest the Industrial revenue Bond Origination Fee Agreement, the First Amendment to Lease and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

Section 4. Further Authority. The Issuer shall, and the officers, agents and employees of the Issuer are hereby authorized and directed to take such action and execute such other documents, certificates and instruments as may be necessary to carry out and comply with the provisions of this Ordinance and the duties of the Issuer under the Lease as amended by the First Amendment to Lease.

Section 5. Effective Date. This Ordinance shall take effect upon its adoption and publication in the official City newspaper as required by law.

PASSED by the Governing Body of the City of Wichita this 18th day of October, 2011.

CITY OF WICHITA, KANSAS

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

[Seal]

APPROVED AS TO FORM:

Gary E. Rebenstorf, City Attorney

INDUSTRIAL REVENUE BOND ORIGATION FEE AGREEMENT

THIS AGREEMENT dated as of October __, 2011, is by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation (the “City”) and Old Town Lodging, LLC, a limited liability company organized and existing under the laws of the State of Kansas (the “Tenant”);

WHEREAS, by Ordinance No. 47-317, adopted December 19, 2006 (the “Ordinance”) the City heretofore has authorized the issuance of its Taxable Industrial Revenue Bonds, Series VI-A, 2006 and Series VI-B, 2006 (Old Town Lodging, LLC) in accordance with K.S.A. 12-1740 to 12-1749d as amended (the “Act”), for the purpose of providing funds to pay the cost of acquiring, improving, equipping, furnishing, repairing and renovating an existing building for use as a Courtyard by Marriott Hotel (the “Project”); and

WHEREAS, K.S.A. 12-1742 provides that an issuer of Bonds under the Act may charge an origination fee exclusively for local economic development activities; and

WHEREAS, the City and the Tenant desire to provide for payment by the Tenant of an origination fee, in the aggregate amount of \$225,000, to be paid in equal annual installments of \$45,000 in each of the years 2012 through 2016, but with any unpaid balance to be due and payable in a lump sum upon any sale of the Project by the Tenant.

NOW, THEREFORE, in consideration of the above, it is agreed as follows:

1. Pursuant to K.S.A. 12-1742, Tenant shall pay directly to the City, as an origination fee, an aggregate total sum of \$225,000, by making an annual payment in the sum of \$45,000 in [Month] of each of the years 2012 through 2016, but with any unpaid balance to be due and payable in a lump sum upon any sale of the Project by the Tenant.

2. The revenues received by the City from such payments shall be used by the City exclusively for local economic development activities.

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the City has caused this Industrial Revenue Bond Origination Fee Agreement to be signed by an authorized official, such signature to be attested by an authorized officer and its official seal to be applied, on this ____ day of October 2011.

CITY OF WICHITA, KANSAS,
as Issuer

By: _____
Carl Brewer
Mayor

[SEAL]

ATTEST:

By: _____
Karen Sublett
City Clerk

IN WITNESS WHEREOF, the Tenant has caused this Industrial Revenue Bond Origination Fee Agreement to be signed by an authorized official, such signature to be attested by an authorized officer and its official seal to be applied, as of the date first above written.

Old Town Lodging, LLC

By: _____
James E. Korroch
Manager

City of Wichita
City Council Meeting
October 11, 2011

TO: Mayor and City Council

SUBJECT: 2011 Solid Waste Plan

INITIATED BY: City Manager's Office

AGENDA: New Business

Recommendation: Approve the 2011 Solid Waste Plan and place the revised City ordinances in Municipal Code Sections 3 and 7 on first reading.

Background: For over a year, the City of Wichita has been working with the citizens of Wichita and the hauler community to develop a solid waste and recycling plan that addresses community concerns and adheres to the Sedgwick County Solid Waste Plan adopted by the Sedgwick County Commission. In Fall 2010, a solid waste plan that would have created a Solid Waste Hauler Cooperative was presented to City Council Members at a council workshop. The 2010 plan addressed frequently mentioned concerns in the community, including: limited recycling, an over abundance of waste dumped into local disposal sites, and increased traffic from waste hauling trucks on City residential streets.

Concerns with the proposed plan were voiced by the public and the City Council after its release. The majority of these concerns centered on the price for service and freedom of choice to select a trash service. After visiting many neighborhood associations, churches, and District Advisory Boards to listen to community concerns regarding the issue, a revised plan was created. Three major messages were delivered by citizens to City staff members during the year long community dialogue. Community members expressed a desire to have freedom of choice for their trash service provider. Community members also asked for the option to recycle, no matter where they were located or what provider they chose. Lastly, residents expressed a desire to have different volume options for trash disposal.

Analysis: The proposed plan incorporates the feedback the City has received over the last year in regard to solid waste collection. New licensing requirements for haulers operating within the City of Wichita will provide for residents to have options to recycle and to purchase trash service geared towards a low volume user. The proposed plan does not require customers to change their current trash service, but provides options if they wish to do so.

Specifics of Plan:

Solid Waste: All solid waste haulers collecting solid waste within the City of Wichita will provide a plan for how their company will provide a “pay-as-you-throw” system for solid waste collection. This plan will be due with each hauler’s license application on November 1, 2011. Plans will include how the hauling company plans on implementing such system by the next license renewal of the following year (November 1, 2012). Plans must provide options for low-generating users at a reduced price, such as a reduced gallon trash container.

Recycling: All solid waste haulers collecting solid waste within the City of Wichita will also provide a plan for how their company will make single-stream recycling service available to their customers. Hauling companies will be given one (1) year to acquire the capital assets necessary to provide this service upon the renewal of their license on November 1, 2012.

Price Inequities: City of Wichita staff will create an interactive website where residents can voluntarily provide 1) the name of their trash service provider, 2) cost for service, and 3) the services they utilize (recycling, low volume container, etc). Each of these criteria would be chosen from a drop box of selections and limits would be set to allow for only one submittal of information per person.

Program Administration: Starting on November 1, 2012, solid waste collectors wishing to operate within the City of Wichita who have met all licensing requirements will be provided a license to collect solid waste and recycling. The solid waste license will provide hauling companies a 10 year contract with the City of Wichita. The City will issue decals at a cost of \$450 for each packer truck. The fee would recover costs to administer the proposed solid waste plan for the City of Wichita, including the continuance of vehicle inspection and decal issuance by the City's Public Work's Department for packer trucks, the monitoring and enforcement of the licensing requirements outlined in the plan, and the creation and monitoring of an interactive website for citizen participation.

Financial Considerations: The solid waste plan as recommended by staff would result in \$51,600 in additional revenue through solid waste license fees to recover the costs of administering the solid waste plan, including vehicle inspection and decal issuance, and compliance assurance through continual plan monitoring.

Goal Impact: The 2011 Solid Waste Plan addresses the Quality of Life and Affordable Living goals of the City of Wichita.

Legal Considerations: The 2011 Solid Waste Plan has been approved as to form by the Law Department. Revisions to the appropriate ordinances in Municipal Code Sections 3 and 7 have been prepared and approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council approve the 2011 Solid Waste Plan and place the revised City ordinances in Municipal Code Sections 3 and 7 on first reading.

Attachments: Solid Waste and Recycling Proposal: September 2011
Revised City Ordinances – Municipal Code Sections 3 & 7

First Published in The Wichita Eagle on OCTOBER 21, 2011

10/11/2011

ORDINANCE NO. 49-107

AN ORDINANCE AMENDING SECTIONS 3.51.040, 3.51.050, 3.51.060 AND 7.08.140, OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO SOLID WASTE LICENSING.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 3.51.040 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

Applications for a solid waste collector license shall be made to the city upon such form and in such manner as may be prescribed by the director of public works. Each solid waste collector shall submit an application by November 1st of 2011. A new solid waste collector shall apply prior to operating a solid waste collection service within the city. Applications for an initial license shall be granted or denied within thirty days of the receipt of the application. An applicant will be deemed not in violation of this chapter during the pendency of the initial application. All licenses shall be renewed by November 1st of each year. Each existing solid waste collector shall submit an application for renewal, on forms

provided by the director of public works, for a solid waste collector license at least ninety days prior to November 1st of each year, beginning in 2012.

SECTION 2. Section 3.51.050 of the Code of the City of Wichita, Kansas is hereby amended to read as follows:

Upon completion of the application, the director of public works shall either grant or deny a license for solid waste collection services. A license for solid waste collection services shall be issued by the director of public works if the following conditions have been met:

(1)

The applicant has executed a contract with the city providing for the terms and conditions contained in Section 3.51.060 of the solid waste collection services to be rendered within the city. Such agreement may be executed by the city manager, or his/her designee, on behalf of the city, after approval of such agreement as to form by the city attorney.

(2)

The applicant has paid the decal license fees as required by section 7.08.140.

(3)

The applicant has provided a plan for how its hauling company will provide a pay as you throw system of trash disposal for its current and potential future

customers, including an option for low-volume users at a reduced price. The plan will be implemented by November 1, 2012.

(4)

The applicant has provided a plan for how its hauling company will provide the option of single stream recycling to its current and potential future customers. The plan will be implemented by November 1, 2012.

SECTION 3. Section 3.51.060 of the Code of the City of Wichita, Kansas is hereby amended to read as follows:

Every solid waste collector required to be licensed under this chapter shall enter into a contract with the city, such contract shall provide substantially as follows:

(1)

The city shall grant the solid waste collector the right and privilege to collect and dispose of solid waste in the city.

(2)

The term of the contract shall be for a term not to exceed ten years.

(3)

The solid waste collector shall maintain a current license as required by this chapter.

(4)

The solid waste collector shall be subject to all ordinances of the city currently existing or hereafter adopted during the term of this contract pertaining to the collection or disposal of solid waste in the city. The solid waste collector will have met all of the requirements to obtain a solid waste license, as mentioned in Section 3.51.50. Nothing in the contract shall constitute a waiver of or be construed as waiving the right of a solid waste collector to oppose, challenge, or seek judicial review of, in such manner as is now or hereafter provided by law, any such ordinance proposed, adopted, or promulgated by the city. Nothing in the contract shall be construed to relieve the city from the requirements of state statute or city ordinance in the adoption of new ordinances or amendments.

(5)

The contract may be canceled at any time in writing by a solid waste collector provided that it has arranged for any continued service required by Section 7.08.140(d).

(6)

The contract may be canceled at any time by the city upon notice in the event of any change in law or regulation or other circumstances that materially affect the

position or financial obligations of the city under the contract, provided that the contracts of all similarly situated solid waste collectors will be treated the same.

(7)

The solid waste collector shall indemnify and hold the city, its officers and employees and agents harmless from any claims or suits arising out of acts or omissions of the solid waste collector in the operations under this chapter.

(8)

The contract required by this chapter may be assigned from one person to another with the approval of the director of public works, which approval shall not be unreasonably withheld.

(9)

The contract shall not be construed to be in conflict with the cash basis or budget law pursuant to K.S.A. 12-2102.

(10)

The contract will prohibit unlawful discrimination as provided by regulation for city contracts.

(11)

The contract shall not preclude a solid waste collector from being licensed by or entering agreements with other parties or governmental entities to provide for the collection and disposal of solid waste.

SECTION 4. Section 7.08.140 of the Code of the City of Wichita, Kansas is hereby amended to read as follows:

All solid waste collection vehicles of each solid waste collector collecting solid waste in the city shall be licensed, maintained and operated in accordance with the definitions and other sections of this chapter. Each solid waste collection vehicle prior to licensure and operation each year shall be inspected and approved by the health officer as to compliance with this chapter. Provided also that the director of the water and sewer department or authorized designee may review any or all applications for sewer tank truck licenses. Additionally, each operator of a sewer tank truck must have on file with the health officer a contingency plan for accidents that result in a spill of liquid wastes from the vehicle. Each solid waste collection vehicle shall be maintained in a safe and operable manner, be capable of providing collection services for which it is licensed, be kept in a clean condition, and have the name of the operator on each side of the truck in letters at least four inches in height.

(b)

Each solid waste collector shall, for each solid waste collection vehicle operated by such collector, pay an annual license fee by November 1st of each year, starting in 2012, in accordance with the following schedule:

(1)

Covered truck—to be used only for industrial solid waste, demolition and construction waste, bulky waste and tree waste, one hundred dollars; provided that, if the covered truck is used to transport the designated solid waste produced only from premises owned and/or occupied by the solid waste collector, the annual license fee shall be reduced to twenty-five dollars;

(2)

Enclosed truck—to be used only for commercial trash, industrial solid waste and bulky waste, one hundred and fifty dollars;

(3)

Flatbed truck—to be used only for tree waste, fifty dollars;

(4)

Open bed truck—to be used only for bulky waste, residential bulky waste and tree waste, fifty dollars;

(5)

Packer truck—to be used only for residential trash, commercial garbage, commercial trash, industrial solid waste and bulky waste, four hundred and fifty dollars;

(6)

Special truck—to be used only for hazardous waste and special waste, both as approved by the health officer, fifty dollars;

(7)

Trailer—to be used only for salvage material, yard waste, or tree waste, twenty-five dollars;

(8)

Sewage tank truck—to be used only for sewage not otherwise classified as hazardous waste, one hundred dollars;

(c)

Licenses shall be renewed by November 1st of each year, starting in 2012, with a ten percent penalty assessed after November 31st for each month or portion thereof for delinquent renewals. Initial license fees shall be prorated, in full month increments, for applications received after November 1st. This provision shall not apply to delinquent renewals. There shall be no refund of fees once paid.

(d)

Each solid waste collector shall submit an application, on forms provided by the health officer, for a solid waste collection vehicle license for each solid waste collection vehicle prior to November 1st of each year and also prior to the operation of any additional solid waste collection vehicle in between licensure dates.

Each solid waste collector as a condition of receiving a license for a packer truck thereby agrees to provide weekly residential trash collection for any single-family dwelling or multifamily dwelling located in the city as requested by the occupant and/or owner of such dwelling upon payment of the agreed charges, provided that such solid waste collector already provides residential trash collection service to one or more such dwellings located within the block of such dwelling for which service is requested. Refusal of such requested service in accordance with the heretofore stated conditions shall be cause for the revocation of a packer truck license. The health officer shall approve or disapprove the licensure category indicated on the application. The city treasurer, upon approval by the health officer and police department as to compliance with this chapter and payment of the appropriate fee, shall issue a solid waste collection vehicle license and two registration tags or decals bearing the number and vehicle category for each solid waste collection vehicle so approved for licensure and/or operation by the health officer. The city treasurer may delegate issuance of the license and registration tags or decals to the department of environmental health. One such tag or decal

shall be securely attached to each side of the licensed solid waste vehicle by the solid waste collector in such a position that it shall be at all times clearly visible.

(e)

With the approval of the health officer the license may be transferred to a replacement vehicle operated by the same licensee.

(f)

Each solid waste collector shall provide collection service in accordance with a schedule as agreed by such solid waste collector and such collector's individual customers. In the case of breakdowns of collection equipment, the solid waste collector shall maintain standby equipment or otherwise arrange for collection services as scheduled or as soon as practicably possible. Residential solid waste collection service shall be scheduled and provided only during the hours of six a.m. to eight p.m. on Monday through Saturday; provided that the health officer may authorize nonscheduled Sunday collection requested by a solid waste collector when normal scheduled collection is negated by emergencies such as adverse weather.

(g)

Solid waste collection vehicles when not in use for the collection of solid waste shall be parked, stored and maintained off of public right-of-way only in zoning districts GC, CBD, LI and GI. Solid waste collection vehicles are prohibited from

being parked, stored or maintained on all public streets and private property in all other zoning districts as defined in the Wichita-Sedgwick County Unified Zoning Code, except when actually collecting solid waste or conducting reasonable and related business activities. Reasonable business activities do not include overnight parking, parking in excess of one hour during collection activities, or parking prior to the commencement or following completion of daily collection activities.

SECTION 5. The originals of Sections 3.51.040, 3.51.050, 3.51.060 and 7.08.140 of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 6. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this 18th day of October,
2011.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf
Director of Law

First Published in The Wichita Eagle on _____

10/11/2011

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTIONS 3.51.040, 3.51.050, 3.51.060 AND 7.08.140, OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO SOLID WASTE LICENSING.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 3.51.040 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

Applications for a solid waste collector license shall be made to the city upon such form and in such manner as may be prescribed by the director of public works. Each solid waste collector shall submit an application by November 1st of 2011. A new solid waste collector shall apply prior to operating a solid waste collection service within the city. Applications for an initial license shall be granted or denied within thirty days of the receipt of the application. An applicant will be deemed not in violation of this chapter during the pendency of the initial application. All licenses shall be renewed by November 1st of each year. Each existing solid waste collector shall submit an application for renewal, on forms

provided by the director of public works, for a solid waste collector license at least ninety days prior to November 1st of each year, beginning in 2012.

SECTION 2. Section 3.51.050 of the Code of the City of Wichita, Kansas is hereby amended to read as follows: Upon completion of the application, the director of public works shall either grant or deny a license for solid waste collection services. A license for solid waste collection services shall be issued by the director of public works if the following conditions have been met:

(1) The applicant has executed a contract with the city providing for the terms and conditions contained in Section 3.51.060 of the solid waste collection services to be rendered within the city. Such agreement shall be executed by the city manager, or his/her designee, on behalf of the city, after approval of such agreement as to form by the city attorney.

(2)

The applicant has paid the decal license fees as required by section 7.08.140.

(3)

The applicant has provided a plan for how its hauling company will provide a pay as you throw system of trash disposal for its current and potential future customers, including an option for low-volume users at a reduced price. The plan will be implemented by November 1, 2012.

(4)

The applicant has provided a plan for how its hauling company will provide the option of single stream recycling to its current and potential future customers.

The plan will be implemented by November 1, 2012.

SECTION 3. Section 3.51.060 of the Code of the City of Wichita, Kansas is hereby amended to read as follows:

Every solid waste collector required to be licensed under this chapter shall enter into a contract with the city, such contract shall provide substantially as follows:

(1)

The city shall grant the solid waste collector the right and privilege to collect and dispose of solid waste in the city.

(2)

The term of the contract shall be for a term not to exceed ten years.

(3)

The solid waste collector shall maintain a current license as required by this chapter.

(4)

The solid waste collector shall be subject to all ordinances of the city currently existing or hereafter adopted during the term of this contract pertaining to the collection or disposal of solid waste in the city. The solid waste collector will have met all of the requirements to obtain a solid waste license, as mentioned in Section 3.51.50. Nothing in the contract shall constitute a waiver of or be construed as waiving the right of a solid waste collector to oppose, challenge, or seek judicial review of, in such manner as is now or hereafter provided by law, any such ordinance proposed, adopted, or promulgated by the city. Nothing in the contract shall be construed to relieve the city from the requirements of state statute or city ordinance in the adoption of new ordinances or amendments.

(5)

The contract may be canceled at any time in writing by a solid waste collector provided that it has arranged for any continued service required by Section 7.08.140(d).

(6)

The contract may be canceled at any time by the city upon notice in the event of any change in law or regulation or other circumstances that materially affect the position or financial obligations of the city under the contract, provided that the contracts of all similarly situated solid waste collectors will be treated the same.

(7)

The solid waste collector shall indemnify and hold the city, its officers and employees and agents harmless from any claims or suits arising out of acts or omissions of the solid waste collector in the operations under this chapter.

(8)

The contract required by this chapter may be assigned from one person to another with the approval of the director of public works, which approval shall not be unreasonably withheld.

(9)

The contract shall not be construed to be in conflict with the cash basis or budget law pursuant to K.S.A. 12-2102.

(10)

The contract will prohibit unlawful discrimination as provided by regulation for city contracts.

(11)

The contract shall not preclude a solid waste collector from being licensed by or entering agreements with other parties or governmental entities to provide for the collection and disposal of solid waste.

SECTION 4. Section 7.08.140 of the Code of the City of Wichita, Kansas is hereby amended to read as follows:

All solid waste collection vehicles of each solid waste collector collecting solid waste in the city shall be licensed, maintained and operated in accordance with the definitions and other sections of this chapter. Each solid waste collection vehicle prior to licensure and operation each year shall be inspected and approved by the health officer as to compliance with this chapter. Provided also that the director of the water and sewer department or authorized designee may review any or all applications for sewer tank truck licenses. Additionally, each operator of a sewer tank truck must have on file with the health officer a contingency plan for accidents that result in a spill of liquid wastes from the vehicle. Each solid waste collection vehicle shall be maintained in a safe and operable manner, be capable of providing collection services for which it is licensed, be kept in a clean condition, and have the name of the operator on each side of the truck in letters at least four inches in height.

(b)

Each solid waste collector shall, for each solid waste collection vehicle operated by such collector, pay an annual license fee by November 1st of each year, starting in 2012, in accordance with the following schedule:

(1)

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(2)

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(3)

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(4)

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(5)

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(6)

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(7)

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(8)

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(c)

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(d)

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operation of any additional solid waste collection vehicle in between licensure dates.

Each solid waste collector as a condition of receiving a license for a packer truck thereby agrees to provide weekly residential trash collection for any single-family dwelling or multifamily dwelling located in the city as requested by the occupant and/or owner of such dwelling upon payment of the agreed charges, provided that such solid waste collector already provides residential trash collection service to one or more such dwellings located within the block of such dwelling for which service is requested. Refusal of such requested service in accordance with the heretofore stated conditions shall be cause for the revocation of a packer truck license. The health officer shall approve or disapprove the licensure category indicated on the application. The city treasurer, upon approval by the health officer and police department as to compliance with this chapter and payment of the appropriate fee, shall issue a solid waste collection vehicle license and two registration tags or decals bearing the number and vehicle category for each solid waste collection vehicle so approved for licensure and/or operation by the health officer. The city treasurer may delegate issuance of the license and registration tags or decals to the department of environmental health. One such tag or decal shall be securely attached to each side of the licensed solid waste vehicle by the solid waste collector in such a position that it shall be at all times clearly visible.

(e)

With the approval of the health officer the license may be transferred to a replacement vehicle operated by the same licensee.

(f)

Each solid waste collector shall provide collection service in accordance with a schedule as agreed by such solid waste collector and such collector's individual customers. In the case of breakdowns of collection equipment, the solid waste collector shall maintain standby equipment or otherwise arrange for collection services as scheduled or as soon as practicably possible. Residential solid waste collection service shall be scheduled and provided only during the hours of six a.m. to eight p.m. on Monday through Saturday; provided that the health officer may authorize nonscheduled Sunday collection requested by a solid waste collector when normal scheduled collection is negated by emergencies such as adverse weather.

(g)

Solid waste collection vehicles when not in use for the collection of solid waste shall be parked, stored and maintained off of public right-of-way only in zoning districts GC, CBD, LI and GI. Solid waste collection vehicles are prohibited from being parked, stored or maintained on all public streets and private property in all other zoning districts as defined in the Wichita-Sedgwick County Unified Zoning Code, except when actually collecting solid waste or conducting reasonable and related business activities. Reasonable business activities do not include overnight

parking, parking in excess of one hour during collection activities, or parking prior to the commencement or following completion of daily collection activities.

SECTION 5. The originals of Sections 3.51.040, 3.51.050, 3.51.060 and 7.08.140 of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 6. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this _____ day of _____, 2011.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf
Director of Law

**Solid Waste and Recycling Proposal
City of Wichita
September 2011**

Background:

For over a year, the City of Wichita has been working with the citizens of Wichita and the hauler community serving Wichita to develop a solid waste and recycling plan that addresses community concerns. Previously presented to City Council Members in a council workshop was the Solid Waste Hauler Cooperative proposal which addressed these frequently mentioned concerns in the community:

1. Limited recycling and over abundance of waste dumped into local disposal sites
2. Increased traffic of waste hauling trucks on City residential streets

Concerns with the proposed plan have been mentioned by the public and the Council since its release; the majority of these concerns centered on the price for service and freedom of choice to select a trash service. To address these issues, the revised plan does not recommend a Cooperative of haulers, but recommends City licensing requirements to increase recycling in the community and decrease the waste stream to local disposal sites while keeping the free market open for solid waste collection.

Solid Waste Proposal:

An ordinance would be written by City of Wichita staff that requires all solid waste haulers collecting solid waste within the City of Wichita to provide a plan for how their company would provide a “pay-as-you-throw” system of solid waste collection. This plan would be due with each hauler’s license application on November 1, 2011. The plan should include how the business plans on implementing such system by the next license renewal on the following year (November 1, 2012). Plans must provide options for low-generating users at a reduced price, such as reduced gallon trash containers.

Recycling Proposal:

An ordinance would be written by City of Wichita staff that mandates all trash haulers licensed to collect solid waste within the City of Wichita to also provide single-stream recycling service as an option to their customers. Hauling companies would be given one (1) year to acquire the capital assets necessary to provide this service upon the renewal of their license on November 1, 2012.

Price Inequities:

City of Wichita staff would create an interactive website where residents can voluntarily provide 1) their trash service provider, 2) cost for service, and 3) the services they utilize (recycling, low volume container, etc). Each of these criteria would be chosen from a drop box of selections and limits would be set to allow for only one submittal of information per person.

Program Administration:

Each year, starting in November 1 of 2012, solid waste collectors wishing to operate within the City of Wichita and abide by the aforementioned ordinances, would be provided with a license to collect solid waste and recycling including a 10 year contract with the City of Wichita, and decals for their fleet for a \$450 decal fee per packer truck.



**PRELIMINARY ESTIMATES
FOR CITY COUNCIL OCTOBER 11, 2011**

- a. Storm Water Drain No. 378 to serve Ridgeport Addition (north of 29th St N, east of Ridge) (468-84769/751501/485392) Traffic to be maintained during construction using flagpersons and barricades. (District V) - \$201,650.00
- b. Water Distribution System to serve Greenwich Business Center Addition (east of Greenwich, south of 29th Street North) (448-90517/735461/470134) Does not affect existing traffic.. (District II) - \$77,000.00
- c. Water Distribution System to serve Greenwich Business Center Addition (east of Greenwich, south of 29th Street North) (448-90533/735469/470142) Does not affect existing traffic.. (District II) - \$35,000.00
- d. Lateral 173, War Industries Sewer to serve Greenwich Business Center Addition (east of Greenwich, south of 29th Street North) (468-84742/744322/480014) Does not affect existing traffic.. (District II) - \$101,650.00
- e. Lateral 174, War Industries Sewer to serve Greenwich Business Center Addition (east of Greenwich, south of 29th Street North) (468-84743/744323/480015) Does not affect existing traffic.. (District II) - \$22,000.00

CITY OF WICHITA
City Council Meeting
October 11, 2011

TO: Mayor and City Council Members

SUBJECT: Partial Acquisition at 5159 North Wichita for the Wichita-Valley Center Flood Control Levee Certification and Rehabilitation Project (County)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: In 2007, the City of Wichita and Sedgwick County entered into an agreement with Federal Emergency Management Agency (FEMA) whereby it was agreed that the City and County would provide certification that the Wichita-Valley Center Flood Control levee system meet revised FEMA levee standards. As part of this certification process, certain portions of the levee system were identified as needing rehabilitation. One such segment is located adjacent to the 39,060 square foot property at 5159 North Wichita in Park City. The proposed acquisition consists of a nineteen foot wide strip of land adjacent to the existing levee property line containing 7,016 square feet. The property is improved with a 960 square foot single family residence and a detached garage. The improvements are within the acquisition area necessitating a total acquisition.

Analysis: The acquisition was appraised at \$75,500. In addition, relocation benefits were calculated at \$22,500 for a total of \$95,000. This amount was offered to the property owners and rejected. The property owners felt that it would take at least \$200,000 to replace the house on a similar site. After negotiation, the owners agreed to accept the offered amount if they were allowed to retain that portion of the site not needed for the project and move their house on to the remnant. The owners will be responsible for the cost to move the house and any repairs required to restore it after the move.

Financial Considerations: The funding source for the project is General Obligation Bonds. A budget of \$106,100 is requested. This includes \$98,000 for the acquisition, \$1,600 for moving, \$5,000 for site clearing and \$1,500 for closing costs and title insurance.

Goal Impact: The acquisition of this parcel is necessary to ensure Efficient Infrastructure by improving storm water issues in a major residential area.

Legal Considerations: The Law Department has approved the real estate agreement as to form.

Recommendations/Actions: It is recommended that the City Council; 1) Approve the budget; 2) Approve the real estate agreement; and 3) Authorize the necessary signatures.

Attachments: Real estate agreement, tract map, and aerial map.

PROJECT: Chisholm Creek Diversion Levee Certification Project **DATE:** _____

COUNTY: Sedgwick **TRACT NO.:** 16

THE CITY OF WICHITA, KANSAS

CONTRACT FOR CONVEYANCE
OF REAL ESTATE BY WARRANTY DEED

THIS AGREEMENT Made and entered into this 22 day of SEPT., 2011, by and between

AMPM Construction Company, LLC

5159 N. Wichita Ave., Park City, KS 67219

(Name and Address)

landowner(s), and the City of Wichita of the State of Kansas.

WITNESSETH, For consideration as hereinafter set forth, the landowner(s) hereby agree(s) to convey fee title to the City of Wichita by Warranty Deed to the following described real estate in the County of Sedgwick, State of Kansas, to wit:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

It is understood and agreed that landowner(s) is/are responsible for all property taxes on the above described property accrued prior to the conveyance of title to the City of Wichita. In the event of relocation, landowner(s) hereby expressly agrees and covenants that they will hold and save harmless and indemnify the City of Wichita and his or her authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property or claims of any nature whatsoever which may occur during the time the City becomes legally entitled to the property and the date of relocation. In no event will the landowner(s) be required to move until the City becomes legally entitled to the property.

The City of Wichita agrees to purchase the above described real estate, and to pay therefore, the following amount within sixty days after the warranty deed conveying said property free of encumbrance has been delivered.

The landowner agrees to vacate and surrender possession of the property on or before March 31, 2012.

The City of Wichita agrees to allow landowner to retain ownership of the single family dwelling and detached garage. It is understood and agreed that the landowner must remove and relocate the dwelling and garage at the landowner's own expense.

Real property to be acquired as right of way:

7,017 (Sq. Ft.)

\$ 98,000.00

Temporary Easement for construction:

N/A (Sq. Ft.)

\$ N/A

Improvement & Buildings acquired with right of way:

Single family dwelling and detached garage

TOTAL: \$ 98,000.00

It is agreed to by the parties hereto that the consideration stated herein includes all benefits the seller is entitled to under K.S.A. 26-518, excepting \$1,600.00 for moving expenses.

It is understood and agreed that the above stated consideration for said real estate is in full payment of said tract of land and all damages arising from the transfer of said property and its use for the purposes above set out. It is understood and agreed that the above stated consideration for said real estate is contingent upon approval by the Wichita City Council.

IN WITNESS WHEREOF The parties have hereunto signed this agreement the day and year first above written.

LANDOWNERS:

By: 

Michael Mahaney, Manager

THE CITY OF WICHITA

ATTEST:

By: _____

Mayor

By: _____

City Clerk

MEMORANDA

Exact and full name of owner, as name appears of record:

AMPM Construction Company, LLC

If mortgage or other liens, show names of holders:

GMAC Mortgage

REMARKS:

PIN/APN 00496051

Security Title File Number 2021830

APPROVED TO FORM:

Gary E. Rebenstorf, Director of Law

RECOMMENDED BY:

Project Manager

Tract #16

ADDITIONAL TAKING DESCRIPTION:

A portion of Lot 23, Arcadian Acres, Sedgwick County, Kansas described as commencing at the southeast corner of said Lot 23; thence S89°05'04"W (assumed), along the south line of said Lot 23, 20.29 feet to a point 346.17 feet east of the southwest corner of said Lot 23, and for a point of beginning; thence N25°38'52"W, 235.89; thence N23°49'22"W, 107.71 feet, to a point on the north line of said Lot 23, and 354.46 feet east of the northwest corner of said Lot 23; thence S89°10'30"W, along the north line of said Lot 23, 27.68 feet to a point on the east line of the Chisholm Creek Diversion Condemnation Case A-41035; thence S26°16'39"E, along the east line of said Chisholm Creek Diversion, 346.95 feet to a point on the south line of said Lot 23; thence N89°05'04"E, along the south line of said Lot 23, 19.68 feet to the point of beginning.

Additional Tract contains 7,016.5 square feet, or 0.161 acres.

AMP Construction Company, LLC Tract #16 (Key # KE-PC-02499):

Lot 23, Arcadian Acres, except that portion condemned in Case A-41035, Sedgwick County, Kansas.

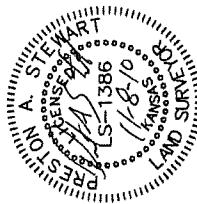
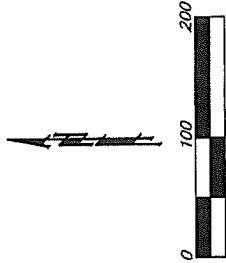
ADDITIONAL TAKING DESCRIPTION:

A portion of Lot 23, Arcadian Acres, Sedgwick County, Kansas described as commencing at the southeast corner of said Lot 23, thence S89°05'04"W (assumed), along the south line of said Lot 23, 20.29 feet to a point 346.17 feet east of the southwest corner of said Lot 23, and for a point of beginning; thence N25°38'52"W, 235.89; thence N23°49'22"W, 107.71 feet, to a point on the north line of said Lot 23, and 354.46 feet east of the northwest corner of said Lot 23; thence S89°10'30"W, along the north line of said Lot 23, 27.68 feet to a point on the east line of the Chisholm Creek Diversion Condemnation Case A-41035; thence S26°16'39"E, along the east line of said Chisholm Creek Diversion, 346.95 feet to a point on the south line of said Lot 23; thence N89°10'04"E, along the south line of said Lot 23, 19.68 feet to the point of beginning.

Additional Tract contains 7,016.5 square feet, or 0.161 acres.

NOTE:

1. Right of Way filed in Misc. Book 270, Page 343.



(C) = Calculated
Ch. BR. = Chord Bearing
Δ = Delta Angle
(D) = Described
L = Arc Length
(M) = Measured
(P) = Plotted
(Pro) = Proved
R = Radius

NOTE: All Coordinates listed are in State Plane coordinates Kansas Grid South.

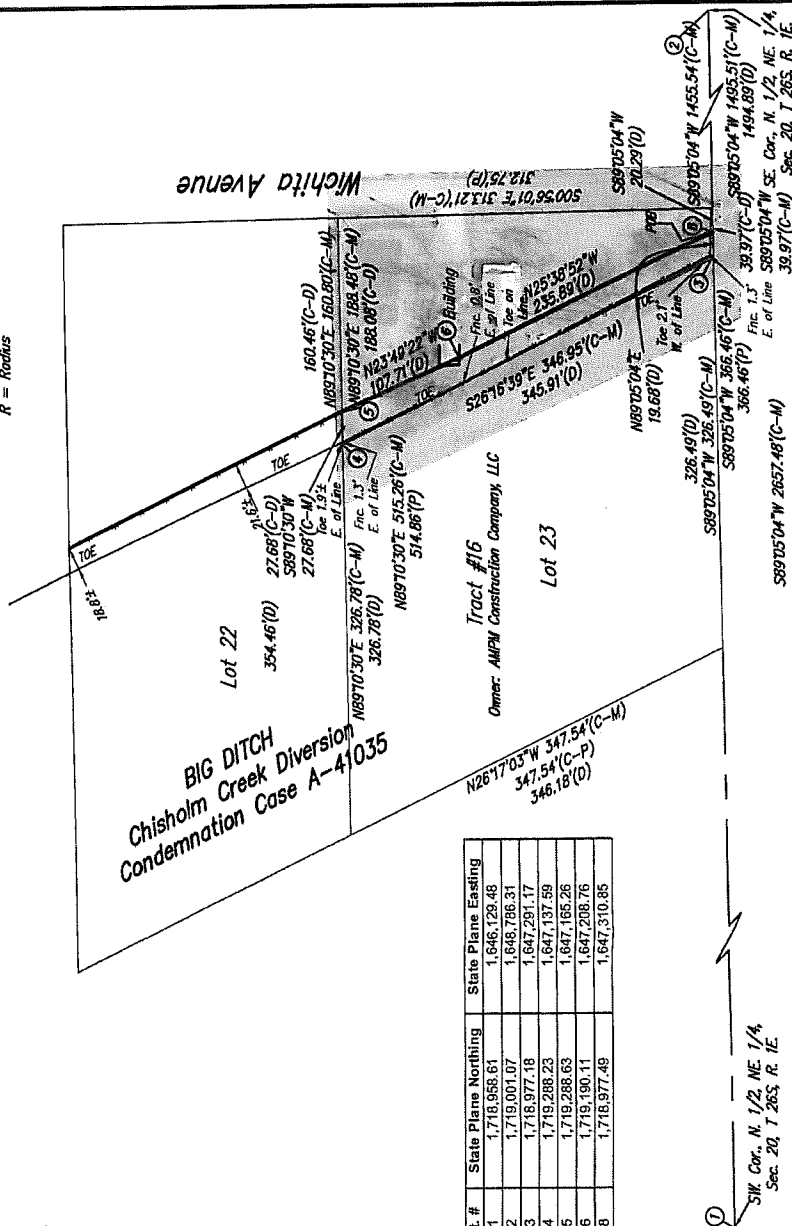
NOTE: Dimensions listed are on the ground.

**BIG DITCH
Chisholm Creek Diversion
Condemnation Case A-41035**

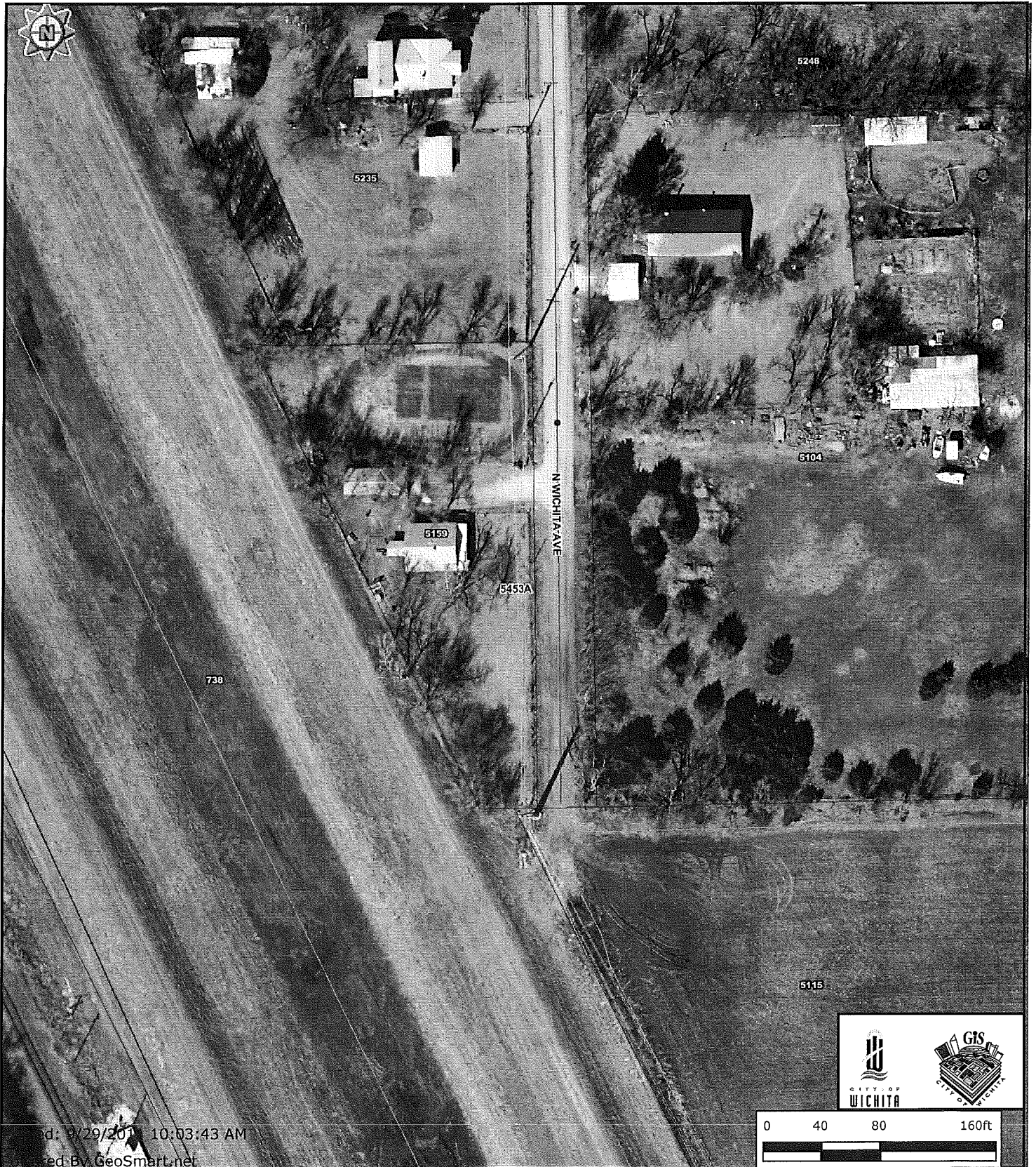
Pt #	State Plane Northing	State Plane Easting
1	1,718,958.61	1,646,129.48
2	1,719,001.07	1,648,786.31
3	1,718,977.18	1,647,291.17
4	1,719,288.23	1,647,137.59
5	1,719,288.63	1,647,165.26
6	1,719,190.11	1,647,208.76
8	1,718,977.49	1,647,310.85

Baughman
Tract #16 - Exhibit
KE-PC-02499 - NE20, Twp. 26S, R. 1E.
Sedgwick County, Kansas

Baughman Company, P.A. 315 E. 11th St., Wichita, KS 67211, P116353019	ENGINEERING SURVEYING PLANNING LANDSCAPE ARCHITECTURE
REVISIONS	APPROVED
November 6, 2010 PAS	MGC
Additional Title Description	DRAWN PAS
November 8, 2010 PAS	DATE
Deflection in new line	November 5, 2010
FILE: Projects \WVCHES_10-07-P687\Tract_16.dwg	10-07-P687



5159 N Wichita



Every reasonable effort has been made to assure the accuracy of the maps and associated data provided herein. This information is provided with the understanding that the data are susceptible to a degree of error, and conclusions drawn from such information are the responsibility of the reader. The City of Wichita makes no warranty, representation or guaranty as to the content, accuracy, timeliness or completeness of any of the data provided herein. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita. The City of Wichita shall assume no liability for any decisions made or actions taken or not taken by the reader in reliance upon any information or data furnished hereunder. The user should consult with the appropriate departmental staff member, e.g. Planning, Parks & Recreation, etc. to confirm the accuracy of information appearing in the visual presentations accessible through these web pages.

CITY OF WICHITA
City Council Meeting
October 11, 2011

TO: Mayor and City Council Members

SUBJECT: Partial Acquisition at 3821 North Arkansas for the Wichita-Valley Center Flood Control Levee Certification and Rehabilitation Project (District VI)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: In 2007, the City of Wichita and Sedgwick County entered into an agreement with Federal Emergency Management Agency (FEMA) whereby it was agreed that the City and County would provide certification that the Wichita-Valley Center Flood Control levee system meet revised FEMA levee standards. As part of this certification process, certain portions of the levee system were identified as needing rehabilitation. One such segment is located at 3821 North Arkansas. The property is improved with a single-family residence. The property's side yard is adjacent to the levee and the proposed acquisition area. The site improvements are removed from the project and will not be impacted.

Analysis: The project acquisition area is an irregular shaped parcel containing 170 square feet. The owner rejected the estimated market value of \$110, or \$0.65 per square foot for the land and has agreed to accept \$250. The additional \$140 is compensation to the owner for having to relocate the garden pond and fountain within the acquisition area.

Financial Considerations: The funding source for the project is General Obligation Bonds. A budget of \$425 is requested. This includes \$250 for the acquisition and \$175 for closing costs and title insurance.

Goal Impact: The acquisition of this parcel is necessary to ensure Efficient Infrastructure by improving storm water issues in a major residential area.

Legal Considerations: The Law Department has approved the real estate agreement as to form.

Recommendations/Actions: It is recommended that the City Council; 1) Approve the budget; 2) Approve the real estate agreement; and 3) Authorize the necessary signatures.

Attachments: Real estate agreement, tract map, and aerial map.

PROJECT: North Levee

DATE: September 14, 2011

COUNTY: Sedgwick

TRACT NO.: 45 - 46

CITY OF WICHITA, KANSAS
A MUNICIPAL CORPORATION

CONTRACT FOR CONVEYANCE OF REAL ESTATE BY WARRANTY DEED

THIS AGREEMENT made and entered into this 14th day of September, 2011 by and between:

Samuel H. Winegarner and Delia A. Winegarner, landowners, and the City of Wichita, State of Kansas,

WITNESSETH, For consideration as hereinafter set forth, the landowner(s) hereby agree(s) to convey unto the City, their duly authorized agents, contractors and assigns the right to enter upon the following described land in Sedgwick County to wit:

A Right-of-way Acquisition Described as Follows:

See attached legal description

It is understood and agreed that landowner(s) is/are responsible for all property taxes on the above described property accrued prior to the conveyance of title to the City. In the event of relocation, landowner(s) hereby expressly agrees and covenants that they will hold and save harmless and indemnify the City and its authorized representatives from any and all costs, liabilities, expenses, suits, judgements, damages to persons or property or claims of any nature whatsoever which may occur during the time the City becomes legally entitled to the property until the relocation is completed. In no event will the land owner(s) be required to move until the City becomes legally entitled to the property.

The City agrees to purchase the above described real estate, and to pay therefore, the following amount within 45 days after the warranty deed conveying said property free of encumbrance has been delivered.

Approximately 170 sq. ft. for right-of-way \$110.00

Cost to Cure: Move garden pond and fountain \$140.00


Damages including but not limited to: _____


TOTAL \$250.00

It is understood and agreed that the above stated consideration for said real estate is in full payment of said tract of land and all damages arising from the transfer of said property and its use for the purposes above set out.

IN WITNESS WHEREOF The parties have hereunto signed this agreement the day and year first above written.

LANDOWNERS:


Samuel H. Winegarner


Debra A. Winegarner
Delia

City of Wichita
County of Sedgwick
State of Kansas

BUYER:

City of Wichita, KS, a municipal corporation

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to form:

Gary E. Rebenstorf, Director of Law

MEMORANDA


Exact and full name of owner, as it appears of record:

Samuel H. Winegarner and Delia A. Winegarner, husband and wife

If mortgage or other liens, show names of holders:

REMARKS:

RECOMMENDED BY:


Dennis Keegan, Acquisition Agent

Tract #45-#46

ADDITIONAL TAKING DESCRIPTION:

A portion of Lots 10 and 11, Block A, Sullivan's Dam Addition, Sedgwick County, Kansas, more particularly described as commencing at the southeast corner of said Lot 10; thence $N00^{\circ}49'36''W$ (assumed), along the east line of said Lot 10, 170.37 feet to a point on the north line of the Chisholm Creek Diversion Condemnation Case A-39388; thence $N78^{\circ}06'36''W$, along the north line of said Chisholm Creek Diversion, 37.56 feet to the point of beginning; thence continue $N78^{\circ}06'36''W$, along the north line of said Chisholm Creek Diversion, 69.38 feet; thence $S89^{\circ}12'49''E$, 34.71 feet; thence $S70^{\circ}09'18''E$, 35.35 feet to the point of beginning.

Additional taking contains 169.7 square feet or 0.004 acres.

Lots 10 and 11, Block A, Sullivan's Dam Addition, Sedgwick County, Kansas, except that portion condemned for flood control purposes in District Court Case A-39338.

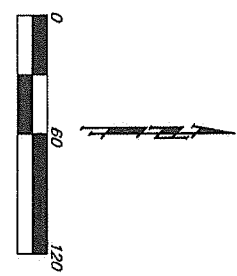
Additional taking description:
A portion of Lots 10 and 11, Block A, Sullivan's Dam Addition, Sedgwick County, Kansas, more particularly described as commencing at the southeast corner of said Lot 10; thence N00°49'36"W (assumed), along the east line of said Lot 10, 170.37 feet to a point on the north line of the Chisholm Creek Diversion Condemnation Case A-39338; thence N78°06'36"W, along the north line of said Chisholm Creek Diversion, 37.36 feet to the point of beginning; thence continue N78°06'36"W, along the north line of said Chisholm Creek Diversion, 69.38 feet; thence S89°12'49"E, 34.71 feet; thence S70°09'18"E, 35.35 feet to the point of beginning.

Additional taking contains 169.7 square feet or 0.004 acres.

NOTE: Baughman Company, P.A. has not researched any title examination of subject property. An abstract or title insurance company would need to be contacted to research and provide to us any easements, rights-of-ways or dedications.

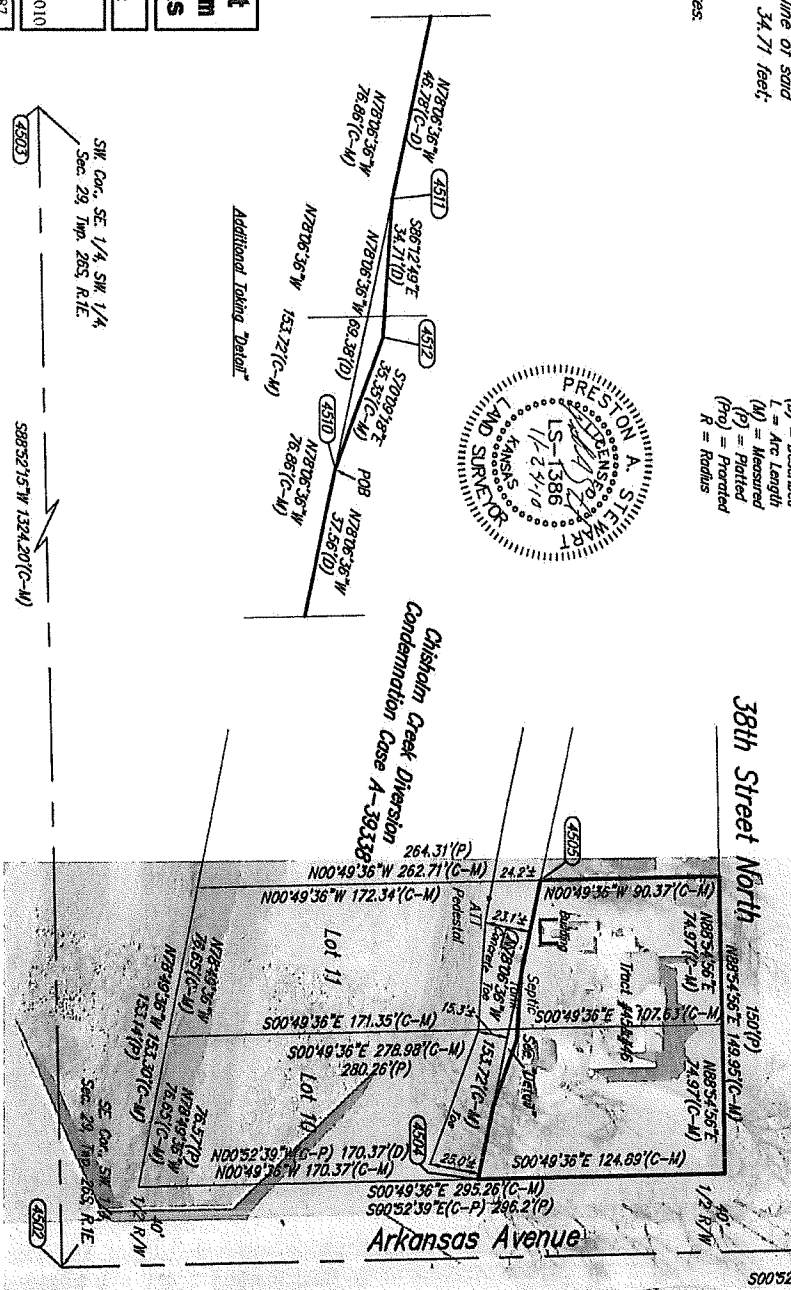
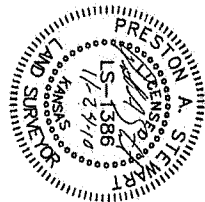
Tract #45 - #46 - Exhibit **Lots 10 & 11 Block A, Sullivan's Dam** **Sedgwick County, Kansas**

Baughman Company, P.A. 315 E. 10th St., Wichita, KS 67211 P: 316.262.7211 F: 316.262.0149	
ENGINEERING SURVEYING PLANNING LANDSCAPE ARCHITECTURE	
REVISIONS	APPROVED
SCALE	M/C/C
DATE	DRAWN
1"=60'	November 24, 2010
E:\Projects\WCHS_1007-1687\Tracts_45.dwg 1007-1687	



PL #	State Plane Northing	State Plane Easting
4501	1,712,342.21	1,646,232.87
4502	1,706,693.24	1,646,273.45
4503	1,709,667.15	1,644,949.66
4504	1,709,902.19	1,646,230.44
4505	1,709,933.86	1,646,080.04
4510	1,709,909.93	1,646,193.69
4511	1,709,924.22	1,646,126.81
4512	1,709,921.93	1,646,180.44

- (C) = Calculated
- CH, BR = Chord Bearing
- D = Delta Angle
- (D) = Described
- L = Arc Length
- (M) = Measured
- (P) = Plotted
- (Pro) = Proved
- R = Radius



NOTE: All Coordinates listed are in State Plane coordinates Kansas Grid South.
NOTE: Dimensions listed are on the ground.

3821 N Arkansas



Printed: 9/29/2011 7:06:40 AM

Powered By GeoSmart, Inc.

Every reasonable effort has been made to assure the accuracy of the maps and associated data provided herein. This information is provided with the understanding that the data are susceptible to a degree of error, and conclusions drawn from such information are the responsibility of the reader. The City of Wichita makes no warranty, representation or guaranty as to the content, accuracy, timeliness or completeness of any of the data provided herein. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita. The City of Wichita shall assume no liability for any decisions made or actions taken or not taken by the reader in reliance upon any information or data furnished hereunder. The user should consult with the appropriate departmental staff member, e.g. Planning, Parks & Recreation, etc. to confirm the accuracy of information appearing in the visual presentations accessible through these web pages.

CITY OF WICHITA
City Council Meeting
October 11, 2011

TO: Mayor and City Council Members

SUBJECT: Partial Acquisition at 5116 North Valentine for the Wichita-Valley Center Flood Control Levee Certification and Rehabilitation Project (County)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: In 2007, the City of Wichita and Sedgwick County entered into an agreement with Federal Emergency Management Agency (FEMA) whereby it was agreed that the City and County would provide certification that the Wichita-Valley Center Flood Control levee system meet revised FEMA levee standards. As part of this certification process, certain portions of the levee system were identified as needing rehabilitation. One such segment is located at 5116 North Valentine in Park City. The property is improved with a single-family residence. The rear of the property is where the project impacts the site. The improvements are removed from the project.

Analysis: The project acquisition area is an irregular shaped parcel containing 1,118 square feet. The owner accepted the estimated market value of \$680, or \$0.60 per square foot together with \$100 as damages to the trees.

Financial Considerations: The funding source for the project is General Obligation Bonds. A budget of \$955 is requested. This includes \$780 for the acquisition and \$175 for closing costs and title insurance.

Goal Impact: The acquisition of this parcel is necessary to ensure Efficient Infrastructure by improving storm water issues in a major residential area.

Legal Considerations: The Law Department has approved the real estate agreement as to form.

Recommendations/Actions: It is recommended that the City Council; 1) Approve the budget; 2) Approve the real estate agreement; and 3) Authorize the necessary signatures.

Attachments: Real estate agreement, tract map, and aerial map.

PROJECT: North Levee

DATE: September 13, 2011

COUNTY: Sedgwick

TRACT NO.: 21

CITY OF WICHITA, KANSAS
A MUNICIPAL CORPORATION

CONTRACT FOR CONVEYANCE OF REAL ESTATE BY WARRANTY DEED

THIS AGREEMENT made and entered into this 13th day of September, 2011 by and between:

Timothy J. and Emma I. Noone, landowners, and the City of Wichita, State of Kansas,

WITNESSETH, For consideration as hereinafter set forth, the landowner(s) hereby agree(s) to convey unto the City, their duly authorized agents, contractors and assigns the right to enter upon the following described land in Sedgwick County to wit:

A Right-of-way Acquisition Described as Follows:

ADDITIONAL TAKING DESCRIPTION:

A portion of Lot 61 and a portion of the South 10 feet of Lot 63, Broadway Heights, an Addition to Wichita, Kansas, Sedgwick County, Kansas described as commencing at the southwest corner of said Lot 61; thence N89°57'34"E (assumed), along the south line of said Lot 61, 342.47 feet to a point 90.50 feet west of the southeast corner of said Lot 61, and for a point of beginning; thence N11°19'13"E, 101.02 feet to a point on the north line of said Lot 61, said point being 45.74 feet more or less west of the northeast corner of said Lot 61 and 378.80 feet east of the northwest corner of said Lot 61; thence N05°51'47"E, 10.07 feet to a point 10.00 feet normally distant north of the north line of said Lot 61, and 379.86 feet east of the west line of said Lot 63 as measured parallel with the south line of said Lot 63; thence N89°11'01"E, parallel with the north line of said Lot 61, 10.97 feet, to a point on the west line of tract number 129 as condemned in the Chisholm Creek Diversion Condemnation Case number A-41501; thence S09°53'26"W, along the west line of said Chisholm Creek Diversion, 10.18 feet to a point on the north line of said Lot 61; thence S11°19'57"W, along the west line of said Chisholm Creek Diversion, 101.17 feet to a point on the south line of said Lot 61; thence S89°57'34"W, along the south line of said Lot 61, 10.20 feet to the point of beginning.

Additional taking contains 1,118.3 square feet, or 0.026 acres.

It is understood and agreed that landowner(s) is/are responsible for all property taxes on the above described property accrued prior to the conveyance of title to the City. In the event of relocation, landowner(s) hereby expressly agrees and covenants that they will hold and save harmless and indemnify the City and its authorized representatives from any and all costs, liabilities, expenses, suits, judgements, damages to persons or property or claims of any nature whatsoever which may occur during the time the City becomes legally entitled to the property until the relocation is completed. In no event will the land owner(s) be required to move until the City becomes legally entitled to the property.

The City agrees to purchase the above described real estate, and to pay therefore, the following amount within 45 days after the warranty deed conveying said property free of encumbrance has been delivered.

Approximately 1,118 sq. ft. for right-of-way \$680.00

Cost to Cure:

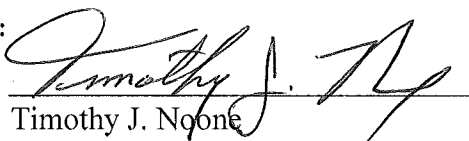
Damages including but not limited to: Trees and landscaping \$100.00

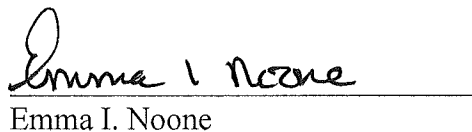
TOTAL \$780.00

It is understood and agreed that the above stated consideration for said real estate is in full payment of said tract of land and all damages arising from the transfer of said property and its use for the purposes above set out.

IN WITNESS WHEREOF The parties have hereunto signed this agreement the day and year first above written.

LANDOWNERS:


Timothy J. Noone


Emma I. Noone

City of Wichita
County of Sedgwick
State of Kansas

BUYER:

City of Wichita, KS, a municipal corporation

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to form:

Gary E. Rebenstorf, Director of Law

MEMORANDA

Exact and full name of owner, as it appears of record:


Timothy J. and Emma I. Noone, husband and wife

If mortgage or other liens, show names of holders:

James J. and Donna M. Noone

REMARKS:

RECOMMENDED BY:


Dennis Keegan, Acquisition Agent

Noone Tract "21" (Key # KE-PC-02559):

Lot 61, except that part condemned in Case A-41501, and the South 10 feet of Lot 63, Broadway Heights, an Addition to Wichita, Kansas, Sedgwick County, Kansas.

ADDITIONAL TAKING DESCRIPTION:

A portion of Lot 61 and a portion of the South 10 feet of Lot 63, Broadway Heights, an Addition to Wichita, Kansas, Sedgwick County, Kansas described as commencing at the southwest corner of said Lot 61; thence N89°37'34"E (assumed), along the south line of said Lot 61, 342.47 feet to a point 90.50 feet west of the southeast corner of said Lot 61, and for a point of beginning; thence N11°19'13"E, 101.02 feet to a point on the north line of said Lot 61, said point being 45.74 feet more or less west of the northwest corner of said Lot 61 and 378.80 feet east of the northwest corner of said Lot 61; thence N05°51'47"E, 10.07 feet to a point 10.00 feet normally distant north of the north line of said Lot 61, and 379.85 feet east of the west line of said Lot 63 as measured parallel with the south line of said Lot 63; thence N89°11'01"E, parallel with the north line of said Lot 61, 10.97 feet, to a point on the west line of tract number 129 as condemned in the Chisholm Creek Diversion Condemnation Case number A-41501; thence S09°53'26"W, along the west line of said Chisholm Creek Diversion, 10.18 feet to a point on the north line of said Lot 61; thence S11°19'57"W, along the west line of said Chisholm Creek Diversion, 101.17 feet to a point on the south line of said Lot 61; thence S89°37'34"W, along the south line of said Lot 61, 10.20 feet to the point of beginning.

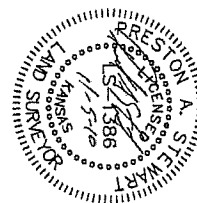
Additional taking contains 1,118.3 square feet, or 0.026 acres.

NOTE:
1. Easement to the City of Wichita, filed in Misc. Book 378, Page 235 (fileable).

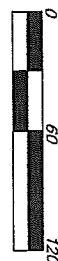


Tract #21 - Exhibit
KE-PC-02559 - Lot 61, Broadway Heights
Sedgwick County, Kansas

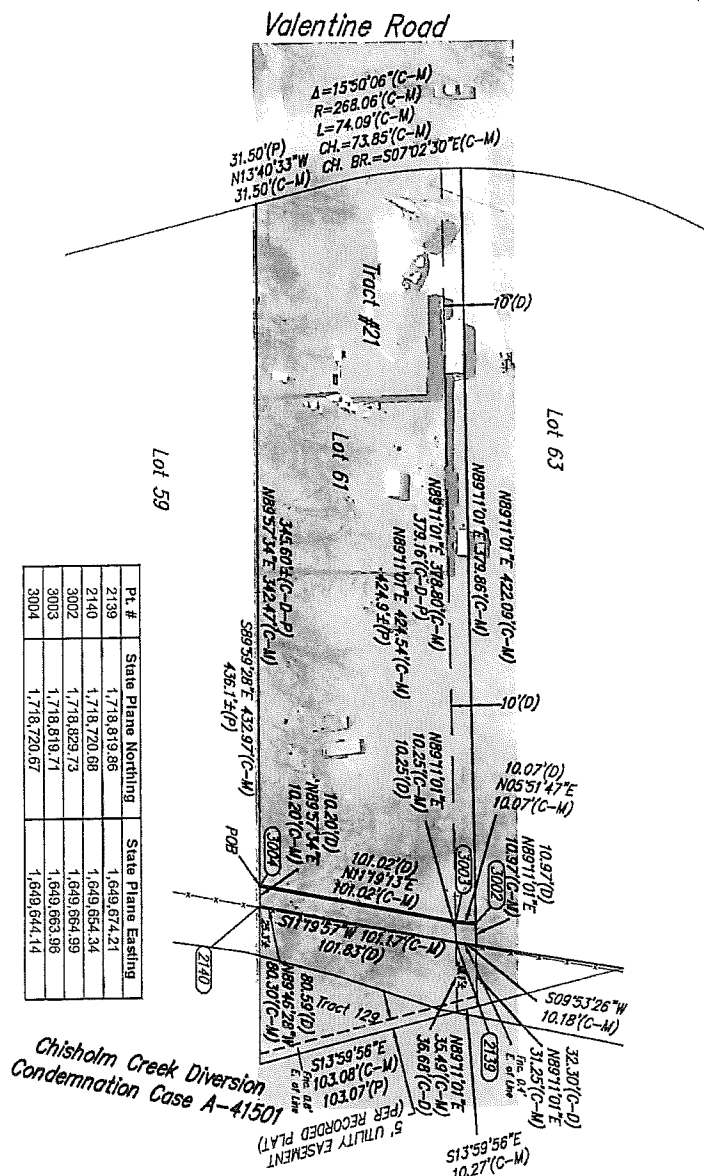
BAUGHMAN COMPANY, P.A., 115 E. 18th St., Wichita, KS 67202-2721 F 316-262-2040 ENGINEERING SURVEYING PLANNING LANDSCAPE ARCHITECTURE	APPROVED MOC PAS	DRAWN PAS
REVISIONS	SCALE 1"=60'	DATE November 5, 2010
FILE PROJECTS WACHS, 10-07-P687 Tract 21.dwg		10-07-P687



NOTE: All Coordinates listed are in State Plane coordinates Kansas Grid South.
NOTE: Dimensions listed are on the ground.



(C) = Calculated
Ch. = Chord Length
Ch. BR. = Chord Bearing
Δ = Delta Angle
(D) = Described
L = Arc Length
(M) = Measured
(P) = Plotted
(PP) = Proved
R = Radius



Chisholm Creek Diversion
Condemnation Case A-41501

5104 5116 5128 N Valentine



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CITY OF WICHITA
City Council Meeting
October 11, 2011

TO: Mayor and City Council Members

SUBJECT: Partial Acquisition at 5128 North Valentine for the Wichita-Valley Center Flood Control Levee Certification and Rehabilitation Project (County)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: In 2007, the City of Wichita and Sedgwick County entered into an agreement with Federal Emergency Management Agency (FEMA) whereby it was agreed that the City and County would provide certification that the Wichita-Valley Center Flood Control levee system meet revised FEMA levee standards. As part of this certification process, certain portions of the levee system were identified as needing rehabilitation. One such segment is located at 5128 North Valentine in Park City. The property is zoned for single-family use however; is improved with only an outbuilding. The rear of the property is where the project impacts the site. The improvements are removed from the project.

Analysis: The project acquisition area is an irregular shaped parcel containing 1,233 square feet. The owner accepted the estimated market value of \$740, or \$0.60 per square foot.

Financial Considerations: The funding source for the project is General Obligation Bonds. A budget of \$915 is requested. This includes \$740 for the acquisition and \$175 for closing costs and title insurance.

Goal Impact: The acquisition of this parcel is necessary to ensure Efficient Infrastructure by improving storm water issues in a major residential area.

Legal Considerations: The Law Department has approved the real estate agreement as to form.

Recommendations/Actions: It is recommended that the City Council; 1) Approve the budget; 2) Approve the real estate agreement; and 3) Authorize the necessary signatures.

Attachments: Real estate agreement, tract map, and aerial map.

PROJECT: North Levee

DATE: September 14, 2011

COUNTY: Sedgwick

TRACT NO.: 20

CITY OF WICHITA, KANSAS
A MUNICIPAL CORPORATION

CONTRACT FOR CONVEYANCE OF REAL ESTATE BY WARRANTY DEED

THIS AGREEMENT made and entered into this 14th day of September, 2011 by and between:

James J. and Donna M. Noone, landowners, and the City of Wichita, State of Kansas,

WITNESSETH, For consideration as hereinafter set forth, the landowner(s) hereby agree(s) to convey unto the City, their duly authorized agents, contractors and assigns the right to enter upon the following described land in Sedgwick County to wit:

A Right-of-way Acquisition Described as Follows:

See attached legal description

It is understood and agreed that landowner(s) is/are responsible for all property taxes on the above described property accrued prior to the conveyance of title to the City. In the event of relocation, landowner(s) hereby expressly agrees and covenants that they will hold and save harmless and indemnify the City and its authorized representatives from any and all costs, liabilities, expenses, suits, judgements, damages to persons or property or claims of any nature whatsoever which may occur during the time the City becomes legally entitled to the property until the relocation is completed. In no event will the land owner(s) be required to move until the City becomes legally entitled to the property.

The City agrees to purchase the above described real estate, and to pay therefore, the following amount within 45 days after the warranty deed conveying said property free of encumbrance has been delivered.

Approximately 1,233 sq. ft. for right-of-way

\$740.00

Cost to Cure:


Damages including but not limited to: _____

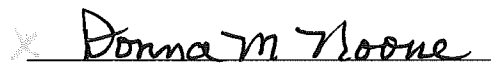
TOTAL **\$740.00**

It is understood and agreed that the above stated consideration for said real estate is in full payment of said tract of land and all damages arising from the transfer of said property and its use for the purposes above set out.

IN WITNESS WHEREOF The parties have hereunto signed this agreement the day and year first above written.

LANDOWNERS:


James J. Noone


Donna M. Noone

City of Wichita
County of Sedgwick
State of Kansas

BUYER:

City of Wichita, KS, a municipal corporation

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to form:

Gary E. Rebenstorf, Director of Law

MEMORANDA


Exact and full name of owner, as it appears of record:

James J. and Donna M. Noone, husband and wife

If mortgage or other liens, show names of holders:

REMARKS:

RECOMMENDED BY:


Dennis Keegan, Acquisition Agent

Tract #20

ADDITIONAL TAKING DESCRIPTION:

A portion of Lot 63, except the south 10 feet thereof, Broadway Heights, an Addition to Wichita, Kansas, Sedgwick County, Kansas, more particularly described as commencing at the northwest corner of said Lot 63; thence N89°03'28"E (assumed), along the north line of said Lot 63, 372.08 feet to a point 10.30 feet, more or less, west of the northeast corner of said Lot 63, and for a point of beginning; thence continuing N89°03'28"E along the north line of said Lot 63, 10.30 feet, more or less, to the northeast corner of said Lot 63; thence S13°59'56"E, along the east line of said Lot 63, 17.51 feet, to the most northerly corner of tract number 129 as condemned in the Chisholm Creek Diversion Condemnation Case Number A-41501; thence S09°53'26"W, along the west line of said Chisholm Creek Diversion, 75.14 feet to a point 10.00 feet normally distant north of the south line of said Lot 63; thence S89°11'01"W, parallel with the south line of said Lot 63, 10.97 feet, more or less, to a point 379.86 feet east of the west line of said Lot 63 as measured parallel with the south line of said Lot 63; thence N05°51'47"E, 91.48 feet to the point of beginning.

Additional taking contains 1,232.8 square feet, or 0.028 acres.

Neone Tract 20 (Key # KE-PC-02560):

Lot 63, except the south 10 feet thereof, Broadway Heights, an Addition to Wichita, Kansas, Sedgwick County, Kansas.

ADDITIONAL TAKING DESCRIPTION:

A portion of Lot 63, except the south 10 feet thereof, Broadway Heights, an Addition to Wichita, Kansas, Sedgwick County, Kansas, more particularly described as commencing at the northwest corner of said Lot 63; thence N89°03'28"E (assumed), along the north line of said Lot 63, 372.08 feet to a point 10.30 feet, more or less, west of the northeast corner of said Lot 63; and for a point of beginning; thence continuing N89°03'28"E along the north line of said Lot 63, 10.30 feet, more or less, to the northeast corner of said Lot 63; thence S13°59'56"E, along the east line of said Lot 63, 17.51 feet, to the most northerly corner of tract number 129 as condemned in the Chisholm Creek Diversion Condemnation Case Number A-41501; thence S09°53'26"W, along the west line of said Chisholm Creek Diversion, 75.14 feet to a point 10.00 feet normally distant north of the south line of said Lot 63; thence S89°11'01"W, parallel with the south line of said Lot 63, 10.97 feet, more or less, to a point 373.86 feet east of the west line of said Lot 63 as measured parallel with the south line of said Lot 63; thence N05°51'47"E, 91.48 feet to the point of beginning.

Additional taking contains 1,232.8 square feet, or 0.028 acres.

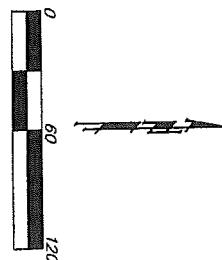
NOTE:
1. Easement to the City of Wichita, filed in Misc. Book 378, Page 233 (illegible).

Tract #20 - Exhibit **KE-PC-02560 - Lot 63, Broadway Heights** **Sedgwick County, Kansas**

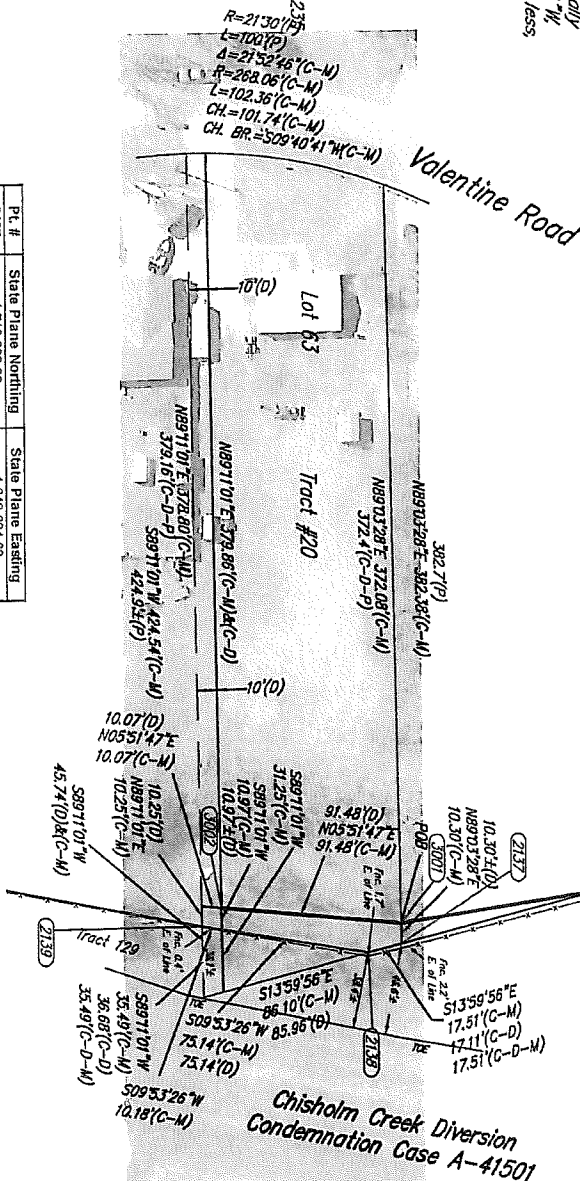
REVISIONS Baughman Company, P.A., 115 E. 15th St., Wichita, KS 67211, P 316-262-7211, F 316-262-0040 ENGINEERING SURVEYING PLANNING LANDSCAPE ARCHITECTURE	APPROVED MOC SCALE 1"=60' DATE: November 5, 2010	DRAWN PAS 1047-P687



NOTE: All Coordinates listed are in State Plane coordinates Kansas Grid South.
NOTE: Dimensions listed are on the ground.



- (C) = Calculated
- CH. = Chord Length
- CH. BR. = Chord Bearing
- A = Delta Angle
- (D) = Described
- L = Arc Length
- (M) = Measured
- (P) = Pictet
- (Pro) = Proved
- R = Radius



Pl. #	State Plane Northing	State Plane Easting
2137	1,718,820.88	1,649,684.63
2138	1,718,803.90	1,649,688.87
2139	1,718,818.86	1,649,674.21
3001	1,718,920.72	1,649,674.34
3002	1,718,823.73	1,649,664.98

5104 5116 5128 N Valentine



Every reasonable effort has been made to assure the accuracy of the maps and associated data provided herein. This information is provided with the understanding that the data are susceptible to a degree of error, and conclusions drawn from such information are the responsibility of the reader. The City of Wichita makes no warranty, representation or guaranty as to the content, accuracy, timeliness or completeness of any of the data provided herein. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita. The City of Wichita shall assume no liability for any decisions made or actions taken or not taken by the reader in reliance upon any information or data furnished hereunder. The user should consult with the appropriate departmental staff member, e.g. Planning, Parks & Recreation, etc. to confirm the accuracy of information appearing in the visual presentations accessible through these web pages.

CITY OF WICHITA
City Council Meeting
October 11, 2011

TO: Mayor and City Council Members

SUBJECT: Partial Acquisition at 5104 North Valentine for the Wichita-Valley Center Flood Control Levee Certification and Rehabilitation Project (County)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: In 2007, the City of Wichita and Sedgwick County entered into an agreement with Federal Emergency Management Agency (FEMA) whereby it was agreed that the City and County would provide certification that the Wichita-Valley Center Flood Control levee system meet revised FEMA levee standards. As part of this certification process, certain portions of the levee system were identified as needing rehabilitation. One such segment is located at 5104 North Valentine in Park City. The property is improved with a single-family residence. The rear of the property is where the project impacts the site. The improvements are removed from the project.

Analysis: The project acquisition area is an irregular shaped parcel containing 1,025 square feet. The owner accepted the estimated market value of \$620, or \$0.60 per square foot together with \$130 as damages to the trees.

Financial Considerations: The funding source for the project is General Obligation Bonds. A budget of \$925 is requested. This includes \$750 for the acquisition and \$175 for closing costs and title insurance.

Goal Impact: The acquisition of this parcel is necessary to ensure Efficient Infrastructure by improving storm water issues in a major residential area.

Legal Considerations: The Law Department has approved the real estate agreement as to form.

Recommendations/Actions: It is recommended that the City Council; 1) Approve the budget; 2) Approve the real estate agreement; and 3) Authorize the necessary signatures.

Attachments: Real estate agreement, tract map, and aerial map.

PROJECT: North Levee

DATE: September 14, 2011

COUNTY: Sedgwick

TRACT NO.: 22

CITY OF WICHITA, KANSAS
A MUNICIPAL CORPORATION

CONTRACT FOR CONVEYANCE OF REAL ESTATE BY WARRANTY DEED

THIS AGREEMENT made and entered into this 14th day of September, 2011 by and between:

James J. and Donna M. Noone, landowners, and the City of Wichita, State of Kansas,

WITNESSETH, For consideration as hereinafter set forth, the landowner(s) hereby agree(s) to convey unto the City, their duly authorized agents, contractors and assigns the right to enter upon the following described land in Sedgwick County to wit:

A Right-of-way Acquisition Described as Follows:

See attached legal description

It is understood and agreed that landowner(s) is/are responsible for all property taxes on the above described property accrued prior to the conveyance of title to the City. In the event of relocation, landowner(s) hereby expressly agrees and covenants that they will hold and save harmless and indemnify the City and its authorized representatives from any and all costs, liabilities, expenses, suits, judgements, damages to persons or property or claims of any nature whatsoever which may occur during the time the City becomes legally entitled to the property until the relocation is completed. In no event will the land owner(s) be required to move until the City becomes legally entitled to the property.

The City agrees to purchase the above described real estate, and to pay therefore, the following amount within 45 days after the warranty deed conveying said property free of encumbrance has been delivered.

Approximately 1,025 sq. ft. for right-of-way \$620.00

Cost to Cure:

Damages including but not limited to: Trees and landscaping \$130.00

TOTAL \$750.00

It is understood and agreed that the above stated consideration for said real estate is in full payment of said tract of land and all damages arising from the transfer of said property and its use for the purposes above set out.

IN WITNESS WHEREOF The parties have hereunto signed this agreement the day and year first above written.

LANDOWNERS:

X James J. Noone
James J. Noone

X Donna M. Noone
Donna M. Noone

City of Wichita
County of Sedgwick
State of Kansas

BUYER:

City of Wichita, KS, a municipal corporation

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to form:

Gary E. Rebenstorf, Director of Law

MEMORANDA

Exact and full name of owner, as it appears of record:

James J. and Donna M. Noone, husband and wife

If mortgage or other liens, show names of holders:

REMARKS:

RECOMMENDED BY:


Dennis Keegan, Acquisition Agent

Tract #22

ADDITIONAL TAKING DESCRIPTION:

A portion of Lot 59, Broadway Heights, an Addition to Wichita, Kansas, Sedgwick County, Kansas, more particularly described as commencing at the southeast corner of said Lot 59; thence N89°38'52"W (assumed), along the south line of said Lot 59, 124.34 feet to a point on the west line of Chisholm Creek Diversion Condemnation Case A-41501, said point being 309.37 feet east of the southwest corner of said Lot 59 and for a point of beginning; thence continue N89°33'48"W, along the south line of said Lot 59, 10.37 feet; thence N10°59'18"E, 101.38 feet to a point on the north line of said Lot 59, said point being 342.67 feet east of the northwest corner of said Lot 59; thence N89°57'34"E, along the north line of said Lot 59, 10.20 feet to a point on the west line of said Chisholm Creek Diversion; thence S10°53'07"W, along the west line of said Chisholm Creek Diversion, 101.43 feet to the point of beginning.

Additional taking contains 1,024.8 square feet, or 0.024 acres.

Noone Tract #22 (Key # KE-PC-02558):

Lot 59, except that part condemned in Case A-41501, Broadway Heights, an Addition to Wichita, Kansas, Sedgwick County, Kansas

ADDITIONAL TAKING DESCRIPTION:

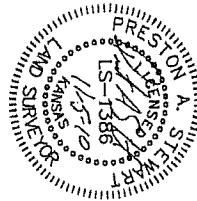
A portion of Lot 59, Broadway Heights, an Addition to Wichita, Kansas, Sedgwick County, Kansas, more particularly described as commencing at the southeast corner of said Lot 59, thence N89°38'32"W (assumed), along the south line of said Lot 59, 124.34 feet to a point on the west line of Chisholm Creek Diversion, thence continue N89°33'48"W, along the south line of said Lot 59, 10.37 feet; thence N10°59'18"E, 101.38 feet to a point on the north line of said Lot 59, said point being 342.67 feet east of the northwest corner of said Lot 59; thence N89°57'34"E, along the north line of said Lot 59, 10.20 feet to a point on the west line of said Chisholm Creek Diversion; thence S10°53'07"W, along the west line of said Chisholm Creek Diversion, 101.43 feet to the point of beginning.

Additional taking contains 1,024.8 square feet, or 0.024 acres.



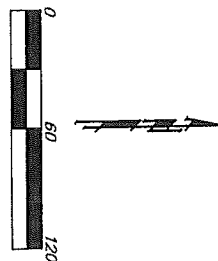
Tract #22 - Exhibit
KE-PC-02558 - Lot 59, Broadway Heights
Sedgwick County, Kansas

REVISIONS	APPROVED	DRAWN
ENGINEERING SURVEYING PLANNING LANDSCAPE ARCHITECTURE	MCC	PAS
	SCALE	DATE
	1"=60'	November 5, 2010
E:\Projects\WVCHLS_10074687\Tract_22.dwg 10/07/2010		

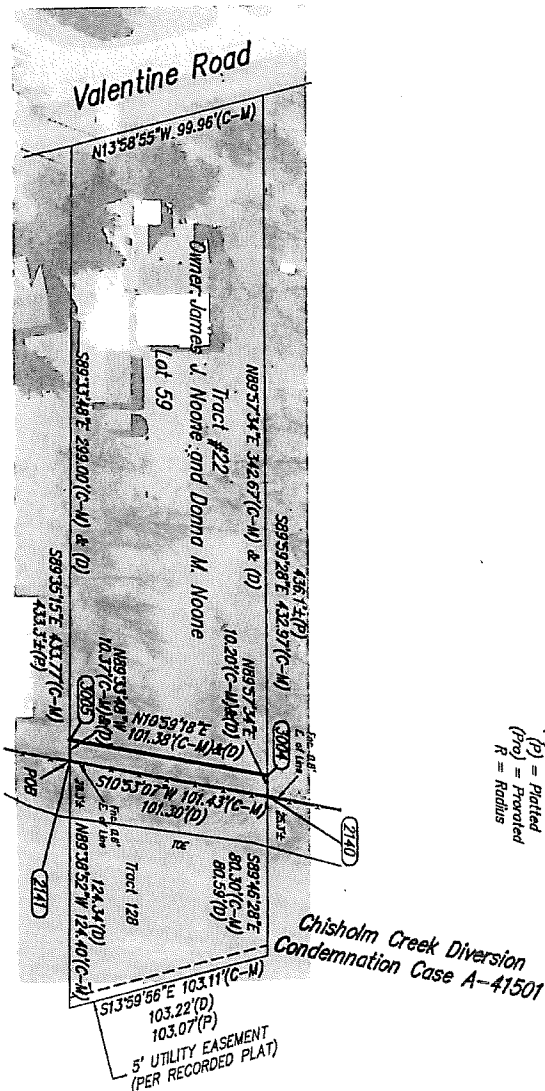


NOTE: All Coordinates listed are in State Plane coordinates Kansas Grid South.

NOTE: Dimensions listed are on the ground.



- (C) = Calculated
- Ch. BE = Chord Bearing
- Ch. LR = Chord Length
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- (D) = Delta Angle
- L = Arc Length
- (M) = Measured
- (P) = Plotted
- (Pro) = Provided
- R = Radius



Pl. #	State Plane Northing	State Plane Easting
2140	1,718,720.68	1,649,654.34
2141	1,718,621.08	1,649,635.19
3004	1,718,720.67	1,649,644.14
3005	1,718,621.16	1,649,624.82

5104 5116 5128 N Valentine



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CITY OF WICHITA
City Council Meeting
October 11, 2011

TO: Mayor and City Council

SUBJECT: Partial Acquisition of Land in the 14800 Block of West Kellogg for the West Kellogg Freeway Project (Districts IV and V)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On January 6, 2009, the City Council approved the design concept for the Kellogg Freeway, between 111th Street West and 143rd Street West. The proposed improvements include widening the freeway from two lanes in each direction to three lanes in each direction, frontage roads, and grade separation at 119th Street West and 135th Street West. There are 43 tracts which will be impacted by the project. The properties consist of single-family residences, commercial properties, vacant land, and billboards. The property located in the 14800 Block of West Kellogg is a vacant parcel consisting of 56 acres and zoned General Commercial along the highway, and Limited Industrial in the southern portion. The project requires a 90 foot wide strip of land along the existing right-of-way line and access control to Kellogg. The proposed acquisition area consists of 93,654 square feet, or 2.15 acres.

Analysis: The owner rejected the appraised offer of \$121,750, or \$1.30 per square foot. After negotiation, the owner agreed to accept \$327,789, or \$3.50 per square foot. The unit value of \$3.50 per square foot is within the range of the comparable sales \$3.40 to \$4.76 per square foot. The depth of the entire parcel and difference in zoning would argue against the 50-70% downward adjustments made by the appraiser. Settlement at \$327,789 avoids the risk associated with eminent domain and saves the associated administrative costs and the time involved in the process.

Financial Considerations: A budget of \$330,289 is requested. This includes \$327,789 for the acquisition and \$2,500 for the closing costs and other administrative costs. The funding source is Local Sales Tax (LST) and, State and Federal grant funds administered by the Kansas Department of Transportation.

Goal Impact: The acquisition of this easement is necessary to ensure Efficient Infrastructure by improving an arterial street through a developed part of the City.

Legal Considerations: The Law Department has approved the contract as to form.

Recommendation/Action: It is recommended that the City Council; 1) Approve the Budget; 2) Approve the Real Estate Purchase Agreement; and 3) Authorize the necessary signatures.

Attachments: Aerial map, real estate purchase agreement and tract map.

PROJECT: West Kellogg DATE: _____
COUNTY: Sedgwick TRACT NO.: 40

THE CITY OF WICHITA, KANSAS

CONTRACT FOR CONVEYANCE
OF REAL ESTATE BY WARRANTY DEED

THIS AGREEMENT Made and entered into this _____ day of _____, 2011, by
and between

Jeff W. Bannon and Melinda Bannon (as to an undivided 50% Interest)
201 N. Wood, Wichita, KS 67212

AND

United Auto Parts, Inc. (as to an undivided 50% interest)
14801 W. US Highway 54, Wichita, KS 67209
(Name and Address)

landowner(s), and the City of Wichita of the State of Kansas.

WITNESSETH, For consideration as hereinafter set forth, the landowner(s) hereby
agree(s) to convey fee title to the City of Wichita by Warranty Deed to the following
described real estate in the County of Sedgwick, State of Kansas, to wit:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

It is understood and agreed that landowner(s) is/are responsible for all property taxes on the
above described property accrued prior to the conveyance of title to the City of Wichita. In
the event of relocation, landowner(s) hereby expressly agrees and covenants that they will
hold and save harmless and indemnify the City of Wichita and his or her authorized
representatives from any and all costs, liabilities, expenses, suits, judgments, damages to
persons or property or claims of any nature whatsoever which may occur during the time
the City becomes legally entitled to the property and the date of relocation. In no event will
the landowner(s) be required to move until the City becomes legally entitled to the property.

The City of Wichita agrees to purchase the above described real estate, and to pay
therefore, the following amount within sixty days after the warranty deed conveying said
property free of encumbrance has been delivered.

Real property to be acquired as right of way:

93,654 (Sq. Ft.)

\$ 327,789.00

Temporary Easement for construction:

N/A (Sq. Ft.)

\$ N/A

Improvement & Buildings acquired with right of way:

None

TOTAL: \$ 327,789.00

It is understood and agreed that the above stated consideration for said real estate is in full payment of said tract of land and all damages arising from the transfer of said property and its use for the purposes above set out. It is understood and agreed that the above stated consideration for said real estate is contingent upon approval by the Wichita City Council.

IN WITNESS WHEREOF The parties have hereunto signed this agreement the day and year first above written.

LANDOWNERS:

By: 

Jeff W. Bannon

By: 

Melinda Bannon

By: 

Jerry Livingston, President of
United Auto Parts, Inc.

THE CITY OF WICHITA

ATTEST:

By: _____

Mayor

By: _____

City Clerk

MEMORANDA

Exact and full name of owner, as name appears of record:

Jeff W. Bannon and Melinda Bannon (as to an undivided 50% interest) AND

United Auto Parts, Inc. (as to an undivided 50% interest)

If mortgage or other liens, show names of holders:

None

REMARKS:

PIN/APN 147350210000100

Security Title File Number 2002302

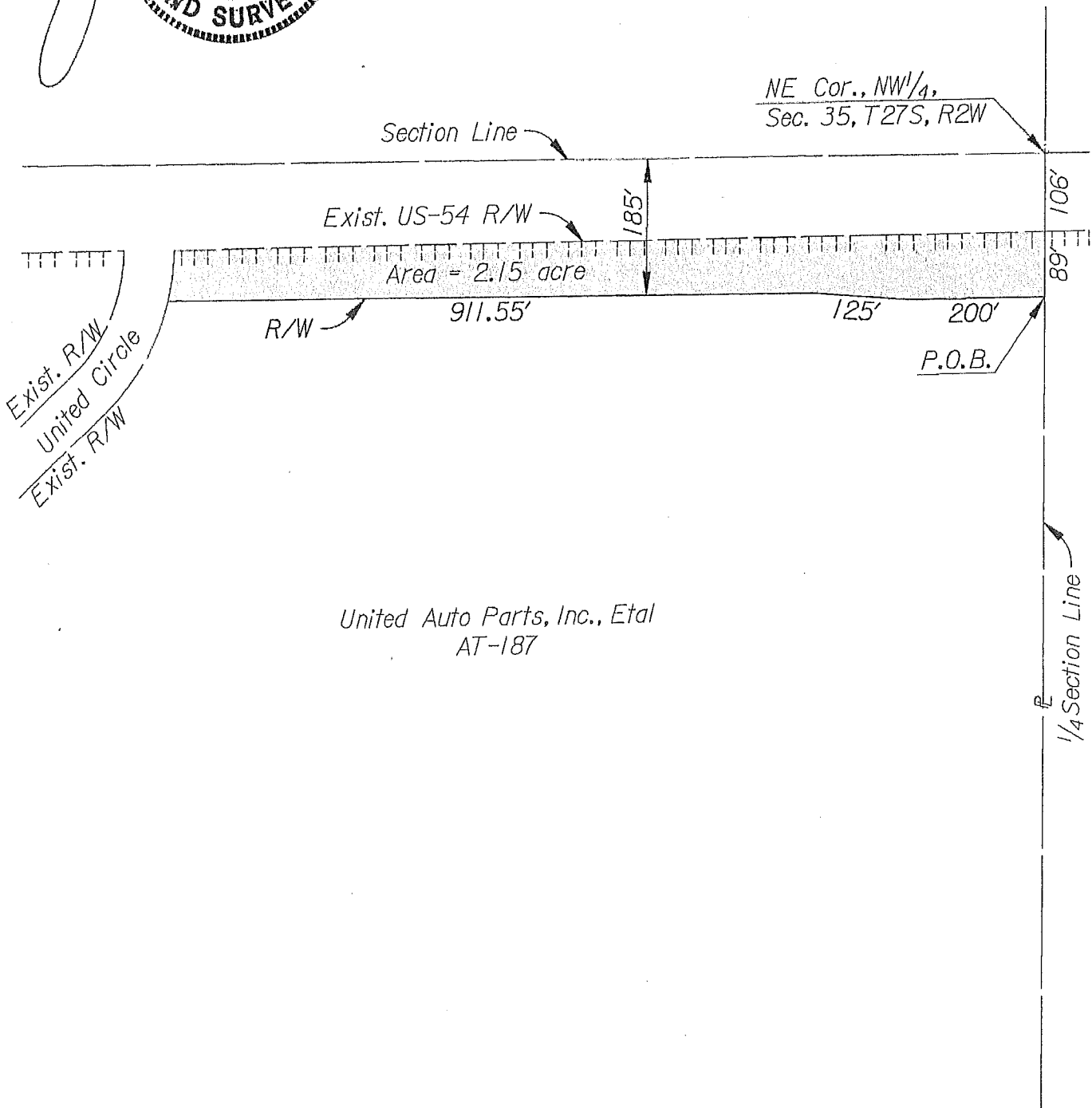
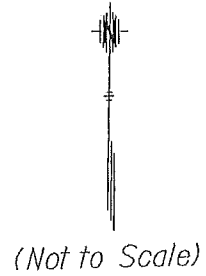
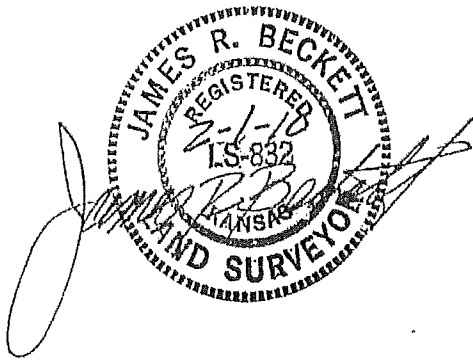
APPROVED TO FORM:

Gary E. Rebenstorf, Director of Law

RECOMMENDED BY:

Project Manager

Tract #40A - AT-187
Easement for Right of Way

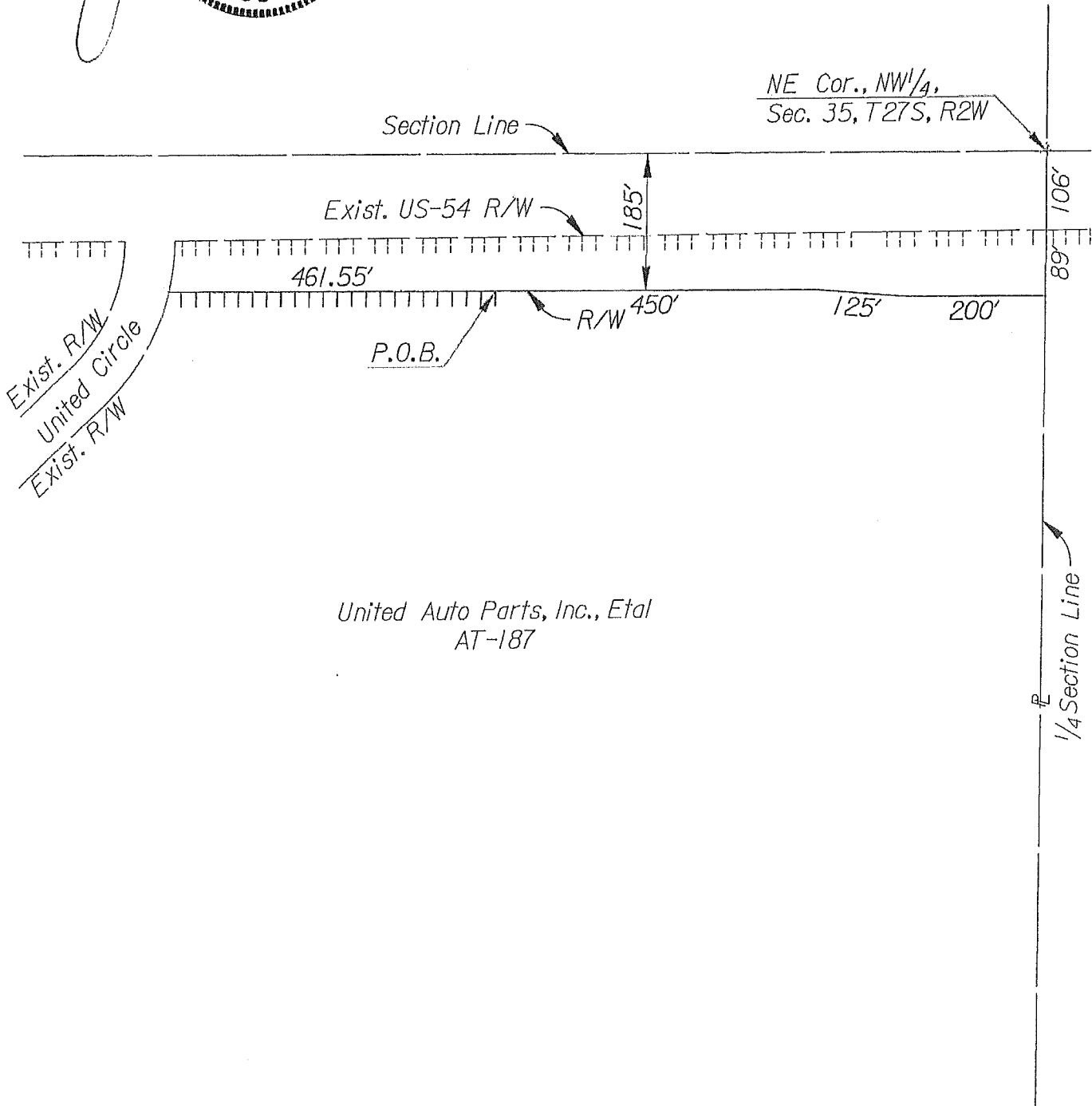
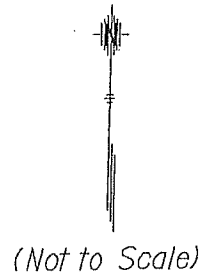


Tract #40A – AT-187
United Auto Parts, Inc., etal
Easement for Right-of-Way

That part of the Northwest Quarter of Section 35, Township 27 South, Range 2 West of the 6th P.M., Sedgwick County, Kansas, lying East of the East right-of-way line of United Circle as platted per the United Industrial Addition to Sedgwick County, Kansas, and North of a line described as beginning at a point on the East line of said Northwest Quarter and 195 feet South of the Northeast Corner of said Northwest Quarter; thence West, parallel with the North line of said Northwest Quarter, a distance of 200 feet; thence Westerly for a distance of 125 feet to a point 185 feet South of said North line; thence West, parallel with said North line, a distance of 911.55 feet more or less to a point on said East right-of-way line of United Circle, containing 2.15 acres more or less exclusive of existing right-of-way.

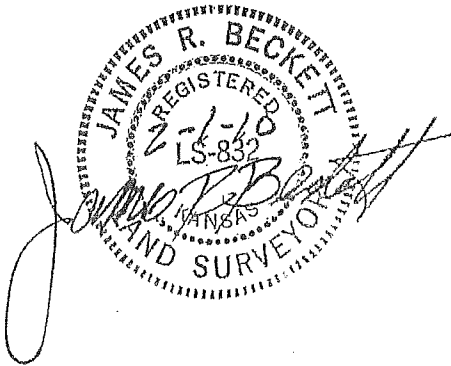


Tract #40B - AT-187
All Right of Access



Tract #40B – AT-187
United Auto Parts, Inc., etal
All Right of Access

All right of access to and from the abutting public roadway over and across a line in the Northwest Quarter of Section 35, Township 27 South, Range 2 West of the 6th P.M., Sedgwick County, Kansas, described as follows: Commencing from a point on the East line of said Northwest Quarter and 195 feet South of the Northeast Corner of said Northwest Quarter; thence West, parallel with the North line of said Northwest Quarter, a distance of 200 feet; thence Westerly for a distance of 125 feet to a point 185 feet South of said North line; thence West, parallel with said North line, a distance of 450 feet to the point of beginning; FIRST COURSE, thence continuing West, parallel with said North line, a distance of 461.55 feet more or less to a point on the East right-of-way line of United Circle as platted per the United Industrial Addition to Sedgwick County, Kansas.





14800 Block West Kellogg



Printed: 9/29/2011 10:33:45 AM
powered By GeoSmart



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DEPARTMENT OF LAW
INTEROFFICE MEMORANDUM

TO: Karen Sublett, City Clerk
FROM: Gary E. Rebenstorf, Director of Law
SUBJECT: Report on Claims for August, 2011
DATE: September 26, 2011

The following claims were approved by the Law Department during the month of August 2011.

AT&T	\$ 1,987.27
Cox Communications	\$ 333.12
Ellis, S.F.	\$ 50.00
Helgerson, Henry	\$ 596.00
Holle, Floyd	\$ 234.30
Mouak, Adil	\$ 1,985.05****

*City Manager Approval

** Settled for lesser amount than claimed

***Settled for more than amount claimed

****Overspray paint claim

cc: Robert Layton, City Manager
Kelly Carpenter, Director of Finance

City of Wichita
City Council Meeting
October 11, 2011

TO: Mayor and City Council

SUBJECT: Fire Department grant application to Assistance to Firefighters Grant (AFG) Program – Fire Prevention & Safety Grant 2010 (All Districts)

INITIATED BY: Wichita Fire Department

AGENDA: Consent Agenda

Recommendations: Accept the Assistance to Firefighters grant award for the Combination Fire Safety/Sprinkler House.

Background: The Wichita Fire Department is seeking \$87,798 in assistance under the Department of Homeland Security Fire Prevention and Safety Grant to purchase a Combination Fire Safety/ Sprinkler House for the Community Fire Safety House Caravan Program. The Department of Homeland Security will provide \$70,238, while privately donated funds will provide the remaining balance of \$17,560. The Combination Fire Safety/Sprinkler House will be used to provide education for high-risk groups, senior citizens, children, and the disabled as well as assist with overcoming challenges associated with living lifestyles such as smoking, cooking fires, matches and lighter fire play involving children, and family escape routes.

Analysis: Each year 5,000 people in the United States die in house fires and 80% of those who are killed by fire die in a single-family dwelling. The City of Wichita has experienced 29 fire fatalities in the last five years. The majority of those who die in house fires are the young and senior citizens.

The City of Wichita statistical data has identified that 22.3% of Wichita’s population are children under the age of 14 and the senior population is 15.8%. There are 31 private schools and 74 public grade and middle schools in the City of Wichita with an estimated total enrollment of about 65,000 students. Of those public schools, 15 have been identified as Chapter 1 schools with high-risk students.

The Wichita Fire Department’s call volume continues to increase every year in the neighborhoods where these students reside and in the older neighborhoods with aging seniors. The Combination Fire Safety/Sprinkler House Safety will assist with reducing fire deaths and injuries to the citizens of Wichita as well as the reduction of fire loss.

Financial Considerations: The Department of Homeland Security will provide \$70,238, while privately donated funds will provide the remaining balance of \$17,560.

Goal Impact: The proposed Combination Fire Safety/Sprinkler House supports the “Provide a Safe and Secure Community” goal by ensuring Wichita’s use of the most up-to-date, hands-on training equipment and curriculum.

Legal Considerations: The Law Department has approved the 2010 Assistance to Firefighters Grant acceptance agreement as to form.

Recommendation/Actions: It is recommended that the City Council approve the grant award and authorize the necessary signatures.

U.S. Department of Homeland Security
Washington, D.C. 20472



FEMA

Ms. Vicki Forbes
Wichita Fire Department
455 North Main Street, 11th Floor
Wichita, Kansas 67202-1691

Re: Grant No.EMW-2010-FP-01775

Dear Ms. Forbes:

On behalf of the Federal Emergency Management Agency (FEMA) and the Department of Homeland Security (DHS), I am pleased to inform you that your grant application submitted under the FY 2010 Assistance to Firefighters Grant Program - Fire Prevention and Safety Grants has been approved. FEMA's Grant Programs Directorate (GPD), in consultation with the U.S. Fire Administration (USFA), carries out the Federal responsibilities of administering your grant. The approved project costs total to \$89,027.00. The Federal share is \$71,222.00 of the approved amount and your share of the costs is \$17,805.00.

As part of your award package, you will find Grant Agreement Articles. Please make sure you read and understand the articles as they outline the terms and conditions of your grant award. Maintain a copy of these documents for your official file. **You establish acceptance of the grant and Grant Agreement Articles when you request and receive any of the Federal grant funds awarded to you.** By accepting the grant, you agree not to deviate from the approved scope of work without prior written approval from FEMA.

If your SF 1199A has been reviewed and approved, you will be able to request payments online. Remember, you should request funds when you have an immediate cash need.

If you have any questions or concerns regarding the process to request your grant funds, please call 1-866-274-0960.

Sincerely,

A handwritten signature in cursive script that reads "Elizabeth M. Harman".

Elizabeth M. Harman
Assistant Administrator
Grant Programs Directorate

Agreement Articles



FEMA

U.S. Department of Homeland Security
Washington, D.C. 20472

AGREEMENT ARTICLES

Assistance to Firefighters Grant Program - Fire Prevention and Safety Grants

GRANTEE: Wichita Fire Department

PROGRAM: Assistance to Firefighters Grant Program - Fire Prevention and Safety Grants

AGREEMENT NUMBER: EMW-2010-FP-01775

AMENDMENT NUMBER:

TABLE OF CONTENTS

Article I	Project Description
Article II	Grantee Concurrence
Article III	Period of Performance
Article IV	Amount Awarded
Article V	Financial Guidelines
Article VI	Prohibition on Using Federal Funds
Article VII	GPD Allocations
Article VIII	Financial Reporting
Article IX	FEMA Officials

Article I - Project Description

The purpose of the **Assistance to Firefighters Grant Program – Fire Prevention and Safety Grants** is to provide funds to national, State, local or community organizations that are recognized for their experience and expertise with respect to fire prevention or firefighter safety programs and activities.

After careful consideration, FEMA has determined that the grantee's project submitted as part of the grantee's application, and detailed in the project narrative as well as the request details section of the application - including budget information - was consistent with the program's purpose and worthy of award. The grantee shall perform the work described in the approved grant application as itemized in the request details section of the application and further described in the grant application's narrative. These sections of the application are made a part of these grant agreement articles by reference. The grantee may not change or make any material deviations from the approved scope of work outlined in the above referenced sections of the application without prior written approval from FEMA.

Article II - Grantee Concurrence

By requesting and receiving Federal grant funds provided by this grant program, the grantee accepts and agrees to abide by the terms and conditions of the grant as set forth in this document and the documents identified below. By receiving funds under this grant, grantees agree that they will use the funds provided through the Fiscal Year 2010 **Assistance to Firefighters Grant Program - Fire Prevention and Safety Grants** in accordance with these Articles of Agreement and the program guidelines provided in the Fiscal Year 2010 **Assistance to Firefighters Grant Program - Fire Prevention and Safety Grants** program guidance. All documents submitted as part of the original grant application are made a part of this agreement by reference.

Article III - Period of Performance

The period of performance shall be from 04-JUN-11 to 03-JUN-12.

Article IV - Amount Awarded

The amount of the award is detailed on the Obligating Document for Award attached to these articles. The following are the budgeted estimates for object classes for this grant (including Federal share plus grantee match):

Personnel	\$0.00
Fringe Benefits	\$0.00
Travel	\$0.00
Equipment	\$82,353.00
Supplies	\$5,445.00
Contractual	\$0.00
Construction	\$0.00
Other	\$0.00
Indirect Charges	\$1,229.00
Total	\$89,027.00

NEGOTIATION COMMENTS IF APPLICABLE (max 4000 characters)

Article V - Financial Guidelines

The grantee and any subgrantee shall comply with the most recent version of the Administrative Requirements, Cost Principles, and Audit Requirements. A non-exclusive list of regulations commonly applicable to DHS grants are listed below:

A. Administrative Requirements

1. 44 CFR Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments
2. 2 CFR Part 215, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations (OMB Circular A-110)

B. Cost Principles

1. 2 CFR Part 225, Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87)
2. 2 CFR Part 220, Cost Principles for Educational Institutions (OMB Circular A-21)
3. 2 CFR Part 230, Cost Principles for Nonprofit Organizations (OMB Circular A-122)
4. Federal Acquisition Regulations (FAR), Part 31.2 Contract Cost Principles and Procedures, Contracts with Commercial Organizations

C. Audit Requirements

1. OMB Circular A-133, Audits of States, Local Governments, and Nonprofit Organizations

Article VI - Prohibition on Using Federal Funds

Recipient understands and agrees that it cannot use any federal funds, either directly or indirectly, in support of the enactment, repeal, modification or adoption of any law, regulation or policy, at any level of government, without the express prior written approval of FEMA.

Article VII - GPD Allocations

The recipient agrees that all allocations and use of funds under this grant will be in accordance with the FY 2010 Assistance to Firefighters Grant Program – Fire Prevention and Safety Grants guidance and application kit.

Article VIII - Financial Reporting

Recipients of an Assistance to Firefighters Grant Program -Fire Prevention and Safety Grant will be required to submit a semi-annual Federal Financial Report (FFR) via the automated system on the Standard Form 425. The FFR is intended to provide Federal agencies and grant recipients with a standard format and consistent reporting requirements throughout the government. The FFR, to be submitted using the online e-grant system, will be due semi-annually based on the calendar year beginning with the period after the award is made. Grant recipients will be required to submit an FFR throughout the entire period of performance of the grant.

The reporting periods for the FFR are January 1 through June 30 (report due by July 31), and July 1 through December 31 (report due by January 31).

At the end of the grant's period of performance, all grantees are required to produce a final report on how the grant funding was used and the benefits realized from the award. Grantees must submit a final financial report and a final performance report within 90 days after the end of the period of performance.

Article IX - FEMA Officials

Program Officer: Catherine Patterson is the Program Officer for this grant program. The Program Officer is responsible for the technical monitoring of the stages of work and technical performance of the activities described in the approved grant application. If you have an programmatic questions regarding your grant, please call the AFG Help Desk at 866-274-0960 to be directed to a program specialist.

Grants Assistance Officer: Jane Early is the Assistance Officer for this grant program. The Assistance Officer is the Federal official responsible for negotiating, administering, and executing all grant business matters.

Grants Management Division POC: The Grants Management Specialist shall be contacted to address all financial and administrative grant business matters for this award. If you have any questions regarding your grant please call ASK-GMD at 866-927-5646 to be directed to a specialist.

ADDITIONAL REQUIREMENTS (IF APPLICABLE) (max 4000 characters)

**FEDERAL EMERGENCY MANAGEMENT AGENCY
OBLIGATING DOCUMENT FOR AWARD/AMENDMENT**

1a. AGREEMENT NO. EMW-2010-FP-01775	2. AMENDMENT NO. 0	3. RECIPIENT NO. 48-6000653	4. TYPE OF ACTION AWARD	5. CONTROL NO. W494331N
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6. RECIPIENT NAME AND ADDRESS Wichita Fire Department 455 North Main Street, 11th Floor Wichita Kansas, 67202-1691	7. ISSUING OFFICE AND ADDRESS Grant Programs Directorate 500 C Street, S.W. Washington DC, 20472 POC: Jane Early	8. PAYMENT OFFICE AND ADDRESS FEMA, Financial Services Branch 500 C Street, S.W., Room 723 Washington DC, 20472
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9. NAME OF RECIPIENT PROJECT OFFICER Vicki Forbes	PHONE NO. 3162684510	10. NAME OF PROJECT COORDINATOR Catherine Patterson	PHONE NO. 1-866-274-0960
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11. EFFECTIVE DATE OF THIS ACTION 04-JUN-11	12. METHOD OF PAYMENT SF-270	13. ASSISTANCE ARRANGEMENT Cost Sharing	14. PERFORMANCE PERIOD From:04-JUN-11 To:03-JUN-12
--	---------------------------------	--	---

Budget Period
From:12-NOV-10 To:30-SEP-11

15. DESCRIPTION OF ACTION

a. (Indicate funding data for awards or financial changes)

PROGRAM NAME ACRONYM	CFDA NO.	ACCOUNTING DATA (ACCS CODE) XXXX-XXX-XXXXXX-XXXXX- XXXX-XXXX-X	PRIOR TOTAL AWARD	AMOUNT AWARDED THIS ACTION + OR (-)	CURRENT TOTAL AWARD	CUMMULATIVE NON- FEDERAL COMMITMENT
FP	97.044	2011-M0-3120GF-25000000-4101-D	\$0.00	\$71,222.00	\$71,222.00	\$17,805.00
TOTALS			\$0.00	\$71,222.00	\$71,222.00	\$17,805.00

b. To describe changes other than funding data or financial changes, attach schedule and check here.
N/A

16 a. FOR NON-DISASTER PROGRAMS: RECIPIENT IS REQUIRED TO SIGN AND RETURN THREE (3) COPIES OF THIS DOCUMENT TO FEMA (See Block 7 for address)

Assistance to Firefighters Grant - Fire Prevention and Safety Program recipients are not required to sign and return copies of this document. However, recipients should print and keep a copy of this document for their records.

16b. FOR DISASTER PROGRAMS: RECIPIENT IS NOT REQUIRED TO SIGN

This assistance is subject to terms and conditions attached to this award notice or by incorporated reference in program legislation cited above.

17. RECIPIENT SIGNATORY OFFICIAL (Name and Title)
N/A

DATE
N/A

18. FEMA SIGNATORY OFFICIAL (Name and Title)
Jane Early

DATE
02-JUN-11

Go Back

Award Package

CITY OF WICHITA
City Council Meeting
October 11, 2011

TO: Mayor and City Council

SUBJECT: Approval of an Encroachment Agreement Across the Drainage Dedication Near George Washington Boulevard and Oliver (District III)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the agreement.

Background: Westar Energy has asked permission to place transmission poles in a drainage dedication located west of the buildings at 2601 South Oliver. These lines are part of an upgrade of the service grid for the southeast part of Wichita. The dedication area was granted to the City via plat for storm water drainage and management.

Analysis: Stormwater Maintenance has reviewed the proposal and has approved the shared use predicated on the transmission poles being placed at least 15 feet west of the east property fence. Westar Energy has received permission from the underlying owner of the land allowing them to place transmission lines. Any costs to install and maintain the transmission lines will be borne by Westar Energy and Westar will move the poles if necessary in the future.

Financial Considerations: There is no cost to the City.

Goal Impact: Approving this encroachment supports Efficient Infrastructure by improving electrical transmission and supply in a significant industrial area of the City.

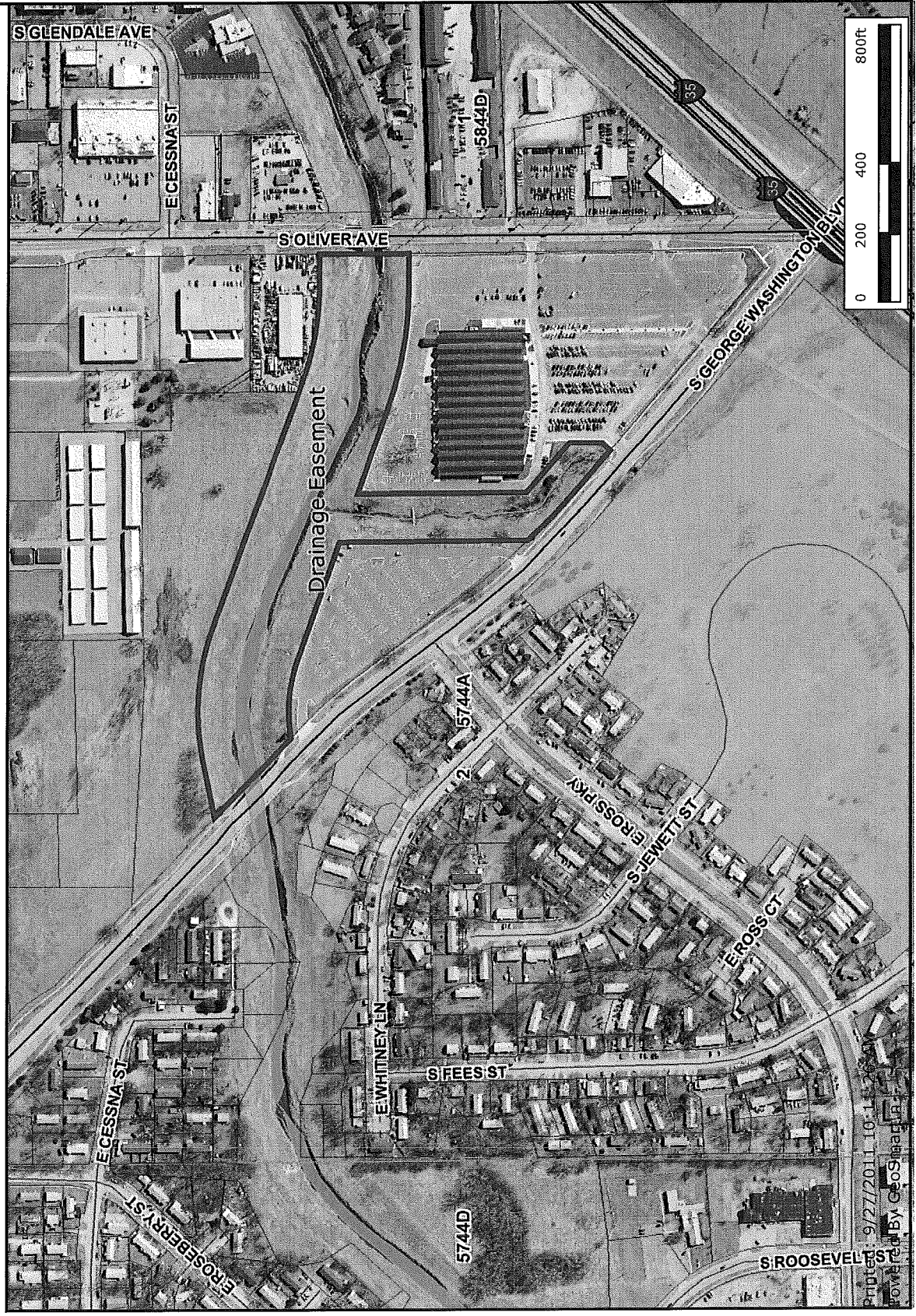
Legal Considerations: The Law Department has approved the agreement as to form.

Recommendation/Action: It is recommended that the City Council approve the encroachment agreement and authorize necessary signatures.

Attachments: Encroachment agreement and aerial map.

Drainage Easement

- Identified Features
- Property Parcels
- Roads
 - State Highway
 - US Federal Highway
 - Interstate
 - KTA
 - Arterial
 - Collector
 - Minor
 - Ramp
- Railroads
- Township and Range
- Section
- Quarter Section
- Waterways
- Streams
- Parks
- Airports
- SDEASTER.S-DEDATA.ORTH-01FI
- SDEASTER.S-DEDATA.ORTH-0
- City Limits
 - Andale
 - Bel Aire
 - Bentley
 - Cheney
 - Clearwater
 - Colwich
 - Derby
 - Eastborough
 - Garden Plain
 - Goddard
 - Hayesville



Every reasonable effort has been made to assure the accuracy of the maps and associated data provided herein. This information is provided with the understanding that the data are susceptible to a degree of error, and conclusions drawn from such information are the responsibility of the reader. The City of Wichita makes no warranty, representation or guaranty as to the content, accuracy, timeliness or completeness of any of the data provided herein. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita. The City of Wichita shall assume no liability for any decisions made or actions taken or not taken by the reader in reliance upon any information or data furnished hereunder. The user should consult with the appropriate departmental staff member, e.g. Planning, Parks & Recreation, etc. to confirm the accuracy of information appearing in the visual presentations accessible through these web pages.



Encroachment Agreement

This Encroachment Agreement dated _____ between the City of Wichita, Kansas (City) and Kansas Gas and Electric Company, a Westar Energy Company, (Westar) is to set out certain conditions under which the City agrees to allow Westar to construct and maintain an electric line on the City's Flood Control Dedication.

Said encroachment is to be within the Gypsum Creek Flood Control Dedication on Film 17, Pages 1294 and Page 1295 as recorded in the Sedgwick County, Kansas Register of Deeds Office, as that part of the easement described in Exhibit A, page 1 and page 2, falls within said Flood Control Dedication; For complete easement description see Exhibit A, page 1 and page 2 attached hereto and made a part herein by reference.

Based on this information and, provided the proper safety clearances are maintained, the City will allow the encroachment of the flood control dedication, subject to the following conditions:

1. **Pole Location.** Poles will be located at least fifteen (15) feet West of the existing boundary fence.
2. **Right of Way.** A proper right-of-way has been acquired by Westar from the owner of the adjacent property affected.
3. **Agreement.** Due to the encroachment of the power line into the City's flood dedication, should it become necessary at a future date to move the poles and lines located in said dedication, Westar will bear the cost of acquiring new easements, and relocating the lines, poles, anchors and equipment.
4. **Power Line Safety.** All parties involved in the construction shall comply with the Kansas Overhead power Line Accident Prevention Act, at KSA 66-1709 *et seq.*, as amended to the extent the Act applies to any work hereunder.

5. **INDEMNIFICATION.** Westar hereby agree to assume all risk and liability for accidents and damages that may occur to persons or property on account of any work or activities conducted on or near by Westar, its agents, employees, contractors or subcontractors or other persons hired by or under its control. Westar Energy, Inc. / Kansas Gas and Electric Company further agrees to indemnify, hold harmless and defend (including costs and attorney fees) the City of Wichita, from any and all costs, liabilities, expenses, suits, judgments, injuries or damages to persons or property, or claims of any nature whatsoever arising out of or relating to this encroachment or the work or activities contemplated herein, and whether caused by Westar, its agents, employees, contractors, or subcontractors, or other persons hired by or under its control.

This Agreement does not apply to any other Westar easements or encroachments.

City of Wichita, Kansas

Westar Energy, Inc.

By: _____
Carl Brewer,
Mayor of the City of Wichita

By: Janel Hutter
Janel Hutter,
Senior Real Estate Representative

Approved as to form:

Attest: _____
Karen Sublett
City Clerk

By: _____
Gary E. Rebenstorf, City Attorney

MUNICIPAL ACKNOWLEDGEMENT

STATE OF KANSAS
COUNTY OF SEDGWICK

On this _____ day of _____, 2011, before me, a Notary Public in and for said County and State aforesaid, personally appeared Carl Brewer, Mayor of the City of Wichita, Kansas, the municipality that executed the foregoing instrument, to me personally known, being by me duly sworn, did say that said instrument was signed and delivered in the name and on behalf of said municipality by authority of its Council and he acknowledges said instrument to be the free and voluntary act and deed of said Municipality.

WITNESS my hand and seal the day and year last above written.

Notary Public

My Appointment expires: _____

CORPORATE ACKNOWLEDGEMENT

STATE OF KANSAS
COUNTY OF SEDGWICK

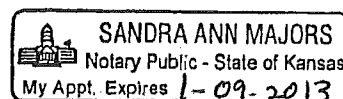
I, Sandra Ann Majors do hereby certify that Janell E. Hutter, Senior Real Estate Representative for Westar Energy, Inc., the corporation that executed the foregoing instrument, personally known, being by me duly sworn, did say that the said instrument was signed and delivered in the name and on behalf of said corporation by authority of its Board of Directors, and she acknowledges said instrument to be the free and voluntary act and deed of said Corporation.

WITNESS my hand and seal the day and year last above written.






Sandra Ann Majors

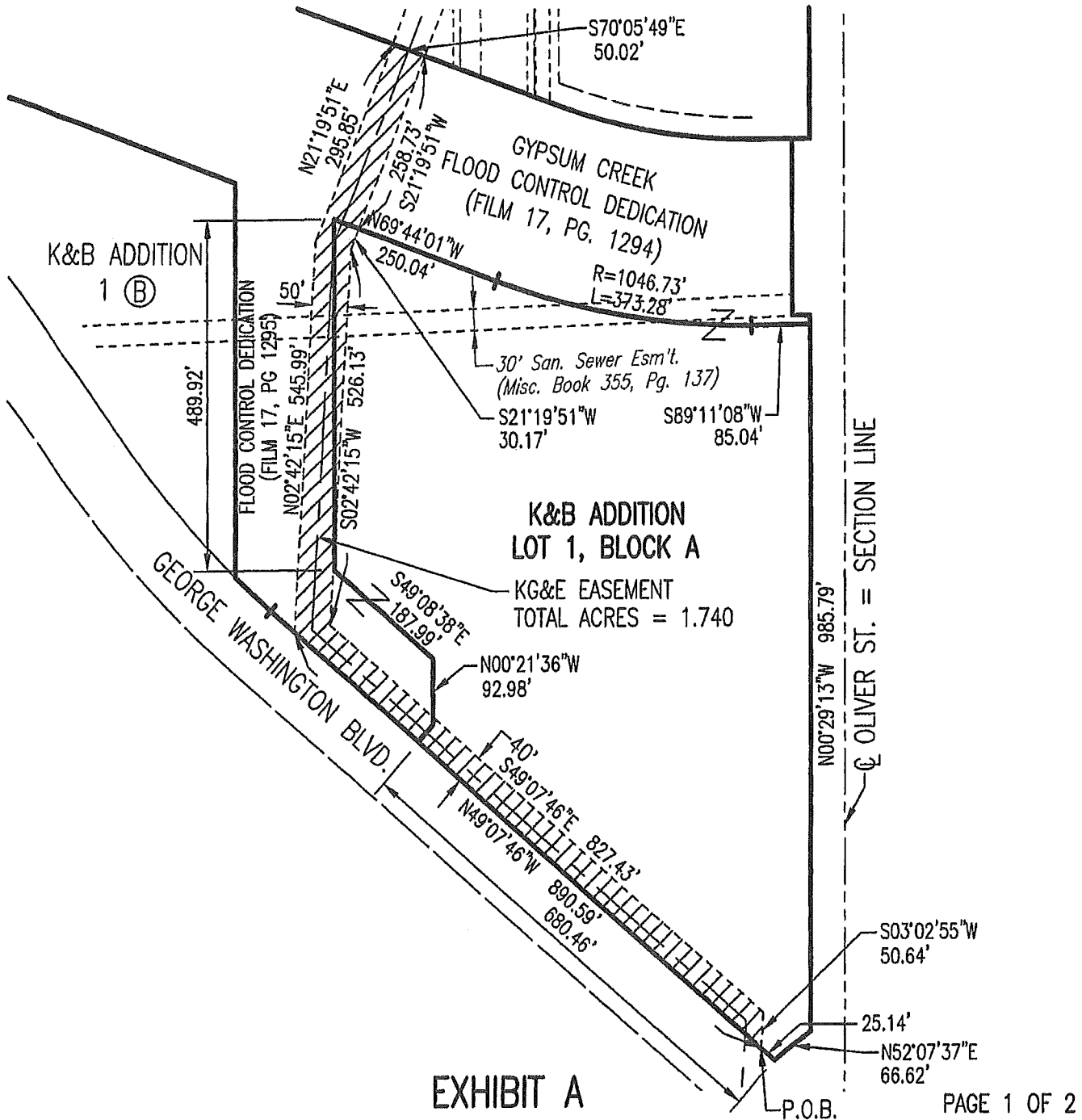
Notary Public

My appointment expires: 1-9-2013



LEGEND

-  = SECTION CORNER
-  = SECTION LINE
-  = PROPERTY LINE
-  = EASEMENT LINE
-  = PROPOSED POLE ALIGNMENT



PROFESSIONAL ENGINEERING CONSULTANTS, P.A.
303 SOUTH TOPEKA WICHITA, KS 67202
316-262-2691 www.pec1.com

69.78
OAKLAWN TO OLIVER
TRANSMISSION LINE



COUNTY	OWNER	TRACT. NO.	PROJ. NO.
SEDGWICK	KBPO LLC	1	-
			DATE: SEP. 23, 2011

EXHIBIT A

Page 2 of 2

September 23, 2011

Westar Energy
Oaklawn to Oliver 69.78
Tract 1
Owner: KBPO LLC

EASEMENT DESCRIPTION

A portion of Lot 1, Block A, K&B Addition to Wichita, Sedgwick County Kansas and Gypsum Creek Flood Control Dedication found on Film 17, Page 1294 and 1295 described as:

Commencing at the South corner of Lot 1, Block A, K&B Addition to Wichita, Sedgwick County, Kansas; thence on an assumed bearing of N49°07'46"W, along the Southwesterly side of said Lot 1 and the Northeasterly Right-of-Way of George Washington Blvd., a distance of 25.14 feet to the Point of Beginning; thence continuing bearing N49°07'46"E, along the Southwesterly side of said Lot 1 and the Northeasterly Right-of-Way of George Washington Blvd. a distance of 890.59 feet; thence bearing N02°42'15"E, a distance of 545.99 feet; thence bearing N21°19'51"E, a distance of 295.85 feet to the North line of the Gypsum Creek Flood Control Dedication found on Film 17, Page 1294; thence bearing S70°05'49"E, along said North line, a distance of 50.02 feet; thence bearing S21°19'51"W, a distance of 258.73 feet to the North line of Lot 1, Block A, K&B Addition; thence continuing bearing S21°19'51"W, a distance of 30.17 feet; thence bearing S02°42'15"W, a distance of 526.13 feet; thence bearing S49°07'46"E, a distance of 827.43 feet; thence bearing S03°02'55"W, a distance of 50.64 feet to the Point of Beginning.

Total easement area encompasses 1.740 acres more or less.

PEC Project No. 08662-021

Second Reading Ordinances for October 11, 2011 (first read on October 4, 2011)

Public Hearing and Tax Exemption Request, Leading Technology Composites. (District IV)

ORDINANCE NO. 49-103

An ordinance exempting property from ad valorem taxation for Economic Development purposes pursuant to Article 11, Section 13, of the Kansas constitution; providing the terms and conditions for Ad Valorem Tax exemption; and describing the property of Leading Technology Composites, Inc., so exempted

Acquisition by Eminent Domain of Tracts Required for the West Kellogg Freeway Project.
(Districts IV and V)

ORDINANCE NO. 49-105

An ordinance providing for the acquisition by eminent domain of certain private property, easements and right-of-way therein, for the purpose of acquiring real property for the improvement of the Kellogg Freeway between 119th Street West and 151st Street West in the City of Wichita, Sedgwick County, Kansas; designating the lands required for such purposes and directing the City Attorney to file a petition in the District Court of Sedgwick County, Kansas, for acquisition of the lands and easements therein taken and providing for payment of the cost thereof.